



~~February 21, 2006 CPC~~  
~~March 21, 2006 CPC~~  
~~April 26, 2006 BS~~  
June 28, 2006 BS

STAFF'S  
REQUEST ANALYSIS  
AND  
RECOMMENDATION

06SN0178

The Reeds Landing Corporation

Matoaca Magisterial District  
Ettrick Elementary, Matoaca Middle and Matoaca High Schools Attendance Zones  
North line of Hickory Road

REQUEST: Rezoning from Agricultural (A) to Residential (R-15).

PROPOSED LAND USE:

A single-family residential subdivision with a minimum lot size of 15,000 square feet is planned. A maximum of 330 dwelling units would be permitted, yielding a density of approximately 1.6 dwelling units per acre. (Proffered Condition 5)

PLANNING COMMISSION RECOMMENDATION

RECOMMEND DENIAL.

AYES: MESSRS. WILSON, GECKER, BASS AND LITTON.  
ABSENT: MR. GULLEY.

STAFF RECOMMENDATION

Recommend denial for the following reason:

While the proposed density complies with the Southern and Western Area Plan, the proposal fails to provide for adequate transportation improvements as recommended by the Thoroughfare Plan, a component of the Comprehensive Plan.

(NOTE: THE ONLY CONDITION THAT MAY BE IMPOSED IS A BUFFER CONDITION. THE PROPERTY OWNER(S) MAY PROFFER OTHER CONDITIONS. THE CONDITIONS NOTED WITH "STAFF/CPC" WERE AGREED UPON BY BOTH STAFF AND THE

COMMISSION. CONDITIONS WITH ONLY A "STAFF" ARE RECOMMENDED SOLELY BY STAFF. CONDITIONS WITH ONLY A "CPC" ARE ADDITIONAL CONDITIONS RECOMMENDED BY THE PLANNING COMMISSION.)

(NOTE: IN ORDER FOR THE BOARD TO CONSIDER THE FOLLOWING AMENDED AND ADDITIONAL PROFFERS, THE PROCEDURES MUST BE WAIVED SINCE THE PROFFERS WERE NOT SUBMITTED PRIOR THE ADVERTISEMENT OF THE CASE.)

### PROFFERED CONDITIONS

The Owners-Applicants in this zoning case, pursuant to Section 15.2-2298 of the Code of Virginia (1950 as amended) and the Zoning Ordinance of Chesterfield County, for themselves and their successors or assigns, proffer that the development of the properties known as Chesterfield County Tax IDs 781-618-6468, 782-619-6148, 784-619-4378 and 784-620-1961 under consideration will be developed according to the following conditions if, and only if, the rezoning requests for R-15 as set forth in the above heading and the application filed herein is granted. In the event the request is denied or approved with conditions not agreed to by the Owners-Applicants, these proffers and conditions shall be immediately null and void and of no further force or effect.

1. Dedications.

- a. In conjunction with recordation of the initial subdivision plat or within sixty (60) days from a written request by the Transportation Department, whichever occurs first, forty-five (45) feet of right-of-way on the north side of Hickory Road, measured from the centerline of that part of Hickory Road immediately adjacent to the property, shall be dedicated, free and unrestricted, to and for the benefit of Chesterfield County.
- b. In conjunction with recordation of the initial subdivision plat, a ninety (90) foot wide right-of-way for a north/south major arterial (the "North/South Arterial") from Hickory Road to the northern property line shall be dedicated, free and unrestricted, to and for the benefit of Chesterfield County. The exact location of this right-of-way shall be approved by the Transportation Department. (T)

2. Access.

- a. Direct vehicular access from the property to Hickory Road shall be limited to two (2) public roads, the North/South Arterial and one (1) other public road. The North/South Arterial shall align the Russwood Road intersection. The exact location of these public roads shall be approved by the Transportation Department.

- b. Direct vehicular access from the property to the North/South Arterial shall be limited to one (1) public road. The exact location of this public road shall be approved by the Transportation Department. (T)

3. Road Improvements.

- (1) To provide an adequate roadway system, the developer shall provide the following road improvements with initial development of the property:
  - a. Construction of a two-lane road for the North/South Arterial, based on VDOT Urban Minor Arterial Standards (50 MPH) with modifications approved by the Transportation Department, from Hickory Road to the north approximately 650 feet. The exact length of this improvement shall be approved by the Transportation Department.
  - b. Construction of additional pavement along the North/South Arterial at its intersection with Hickory Road to provide a three-lane typical section (i.e., one (1) northbound lane and two (2) southbound lanes). The exact length of these improvements shall be approved by the Transportation Department.
  - c. Construction of additional pavement along the North/South Arterial at the approved public road intersection to provide left and right turn lanes, based on Transportation Department standards.
  - d. Widening/improving the north side of Hickory Road to an eleven (11) foot wide travel lane, measured from the centerline of the existing pavement, with an additional one (1) foot wide paved shoulder plus a seven (7) foot wide unpaved shoulder and overlaying the full width of Hickory Road with one and one-half (1.5) inches of compacted bituminous asphalt concrete, with modifications approved by the Transportation Department, for the entire property frontage.
  - e. Prior to recordation of the 281st lot in the subdivision, the construction of a two-lane road for the North/South Arterial, based on VDOT Urban Minor Arterial Standards (50 MPH) with modifications approved by the Transportation Department for a point approximately 650 feet north of Hickory Road from a distance of approximately 3,350 feet to the Resource Protection Area (RPA) line along the northern property line. In addition, prior to the recordation of the 281<sup>st</sup> lot in the subdivision a cash payment of \$200.00 per linear foot shall be provided to Chesterfield County towards construction of the section of the North/South Arterial from the northern terminus of the developer's

construction of the North/South Arterial to the northern property line.

- f. Dedication to Chesterfield County, free and unrestricted, of any additional right-of-way (or easements) required for the improvements identified above. (T)

4. Cash

The applicant, subdivider, or assignee(s) shall pay the following to the County of Chesterfield, prior to the issuance of a building permit, for infrastructure improvements within the service district for the property:

- a. \$15,600 per dwelling unit, if paid prior to July 1, 2006; or
- b. The amount approved by the Board of Supervisors not to exceed \$15,600 per dwelling unit adjusted upward by any increase in the Marshall and Swift Building Cost Index between July 1, 2005 and July 1 of the fiscal year in which the payment is made if paid after June 30, 2006.
- c. Cash proffer payments shall be spent for the purposes proffered or as otherwise permitted by law. (B&M)

5. Density. The total number of dwelling units shall not exceed 330. (P)

6. Manufactured Homes.

- a. Manufactured homes shall not be permitted on the Property. (P)

7. The Community Identification Sign shall be similar in appearance to the photograph entitled Exhibit "A", shall be of brick construction, and shall have a maximum area of twenty-five square feet. (P)

8. The fifty (50') foot buffer required by Ordinance along Hickory Road shall be maintained in open space. Prior to the recordation of the initial subdivision plat, the developer shall build a wooden four board fence, as depicted in the photograph marked Exhibit "B", within the fifty (50') buffer. Such fence shall run generally parallel to Hickory Road, along the entire length of the property frontage. The exact location and design shall be approved by the Planning Department at the time of tentative subdivision review. (P)

9. HOMEOWNER ASSOCIATION COVENANTS

At a minimum, the following restrictive covenants shall be recorded prior to, or in conjunction with, the recordation of a subdivision plat, provided, however, that references to "Stoney Glen South" shall be modified as to beginning dates,

references the subject property and may be modified to reference the then current developer/owner of the subject property.

W I T N E S S E T H ;

WHEREAS, the Developer is the owner of the real property described in Article II of this Declaration and desires to create thereon a planned development residential community to be known as "Stoney Glen South";

WHEREAS, the Developer desires to provide for the preservation of values and for the maintenance of common facilities and services and for a vehicle for the administration and enforcement of covenants and restrictions;

WHEREAS, the Developer has caused the Association to be incorporated under the laws of the Commonwealth of Virginia for the purpose of exercising the functions aforesaid, and which are hereinafter more fully set forth;

NOW THEREFORE, the Developer declares that the real property described in Article II, and such additions thereto as may hereinafter be made pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed, given, donated, leased, occupied and used subject to the covenants, restrictions, conditions, easements, charges, assessments ("Assessments"), affirmative obligations, and liens (all hereinafter sometimes referred to as ("Covenants") hereinafter set forth.

ARTICLE I

DEFINITIONS

When used in this Declaration or any supplemental declaration (unless the context shall clearly indicate otherwise) the following words and terms shall have the following meanings:

(a) "Association" shall mean and refer to Stoney Glen South Association, Inc., a Virginia non-profit, non-stock corporation, its successors and assigns.

(b) "Stoney Glen South" shall mean and refer to the lands in Chesterfield County, Virginia, which are shown as a part of Stoney Glen South on the Developer's Master Plan as revised from time to time.

(c) "Developer" shall mean Stoney Glen South Limited Partnership, a Virginia Limited Partnership, its successors and assigns.

(d) The "Properties" shall mean and refer to the Existing Property described in Article II hereof, and additions thereto as are subjected to this Declaration or any Supplementary Declaration under the provisions of Article II hereof.

(e) "Residential Lot" shall mean any subdivided parcel of land located within the Properties which parcel is intended for use as a site for a Single Family Detached Dwelling as shown upon any recorded final subdivision map of any part of the Properties. No parcel shall, however, be classified as a Residential Lot for the purpose of calculating votes or assessments, nor placed upon the Registration List, until the first day of the quarter of the year following (i) the date of recording of the Plat in the Clerk's Office of the Circuit Court of Chesterfield County, Virginia ("Clerk's Office"), showing such lot, and (ii) the date of placement of such lot on the Developer's inventory list of lots available for sale to purchasers.

(f) "Registration List" shall mean and refer to the official index prepared by the Association of all Residential Lots within the Properties. The Developer shall submit to the Association a listing of any parcel or parcels of land which shall become eligible to be added to the Registration List no later than one (1) day prior to the commencement of the quarter of the year during which said parcel or parcels of land shall be classified as a Residential Lot.

(g) "Family Dwelling Unit" shall mean and refer to any Single Family Detached Dwelling constructed upon any Residential Lot located within the Properties.

(h) "Owner" shall mean and refer to the Owner as shown by the real estate records in the Clerk's Office, whether it be one (1) or more persons, firms, associations, corporations, or other legal entities, of fee simple title to any Residential Lot or parcel of land situated upon the Properties but, notwithstanding any applicable theory of a deed of trust, shall not mean or refer to the mortgagee or holder of a deed of trust, its successors or assigns, unless and until such mortgagee or holder of a deed of trust has acquired title pursuant to foreclosure or a proceeding or deed in lieu of foreclosure; nor shall the term "Owner" mean or refer to any lessee or Tenant of an Owner. In the event that there is recorded in the Clerk's Office a long-term contract of sale covering any Lot or parcel of land within the Properties, the Owner of such Residential Lot or parcel of land shall be the Purchaser under said contract and not the fee simple title holder. A long-term contract of sale shall be one where the Purchaser is required to make payments for the Property for a period extending beyond nine (9) months from the date of the contract and where the Purchaser does not receive title to the Property until all such payments are made, although the Purchaser is given the use of said Property.

(i) "Tenant" shall mean and refer to the lessee under a written agreement for the rent and hire of a Family Dwelling Unit in Stoney Glen South..

(j) "Member" shall mean and refer to all those Owners who are Members of the Association as defined in Section 1 of Article III.

(k) "Master Plan" shall mean and refer to the drawing which represents the conceptual plan for the future development of Stoney Glen South. Since the concept of the future development of Stoney Glen South is subject to continuing revision and change by the Developer, present and future references to the "Master Plan" shall be references to the latest revision thereof.

(l) "Intended for Use" shall mean the use intended for various parcels within the Properties as shown on the Master Plan or the use to which any particular parcel of land is restricted by covenants expressly set forth or incorporated by reference in deeds by which the Developer has conveyed the property.

(m) "Common Properties" shall mean and refer to those tracts of land with any improvements thereon which are deeded or leased to the Association and designated in said deed or lease as "Common Properties" and any personal property acquired or leased by the Association if said property is designated a "Common Property". All Common Properties are to be devoted to and intended for the common use and enjoyment of the Members of the Association, their guests, Tenants (to the extent permitted by the Board of Directors of the Association), and visiting members of the general public (to the extent permitted by the Board of Directors of the Association) subject to the fee schedules and operating rules adopted by the Association, provided, however, that any lands or personal property which are leased by the Association for use as Common Properties shall lose their character as Common Properties upon expiration of such lease.

(n) "Intended Common Property" shall mean and refer to those tracts of land and any improvements thereon committed to the Association through express, written notification by the Developer to the Association of intent to convey said property to the Association as a Common Property.

(o) "Referendum" shall mean and refer to the power of all or some specific portion of the Members to vote by mailed ballots on certain actions by the Board of Directors of the Association more particularly set forth herein. In the event fifty-one (51%) percent of the votes actually returned to the Association within the specified time shall be in favor of such action, the Referendum shall be deemed to "pass" and the action voted upon will be deemed to have been authorized by the Members, provided, however, that if a higher percentage required to "pass" shall be specifically expressed herein, that higher percentage shall control in that instance.

(p) "Clerk's Office" shall mean and refer to the office of the Clerk of the Circuit Court of Chesterfield County, Virginia.

## ARTICLE II

### EXISTING PROPERTY AND ADDITIONS

Section 1. Existing Property. The real property which is and shall be held, transferred, sold, conveyed, given, donated, leased, occupied, and used subject to these Covenants is described as follows:

All that tract or parcel of land, situate, lying and being in Chesterfield County, Virginia, which is more particularly described in Exhibit "A" attached hereto and by specific reference made a part hereof.

All of the real property hereinabove described shall sometimes be referred to herein as the "Existing Property". The Developer intends to develop the Existing Property in accordance with

a Master Plan placed on display in certain model homes and other areas. The Developer reserves the right to review and modify the Master Plan at its sole option from time to time based upon its continuing research and design program. The Master Plan shall not bind the Developer to adhere to the Master Plan in the development of the land shown thereon. Subject to its right to modify the Master Plan as stated herein, the Developer shall convey to the Association certain properties designated for such conveyance in Article IV, Section 4 of this Declaration, and, in addition, may at its option convey to the Association as provided in Article IV such of those parcels of land designated on the Master Plan as properties which may be transferred to the Association, as, in the reasonable exercise of its discretion, it so chooses without regard to the relative location of such portions or sections within the overall Plan. Once conveyed to the Association, these properties shall become Common Properties. The Developer shall not be required to follow any predetermined sequence or order of improvements and development and may bring within the plan of these covenants additional lands, and develop the same before completing the development of the Existing Property. Other than as stated in this paragraph, the Developer shall have full power to add to, subtract from, or make changes in the Master Plan regardless of the fact that such actions may alter the relative maximum potential voting strength of the various types of membership of the Association.

Section 2. Additions to Existing Property. Additional lands may become subject to this Declaration in the following manner:

(a) Additions. During the period of development, which shall by definition extend from the date hereof to January 1, 1999, the Developer shall have the right, without further consent of the Association, to bring within the Plan and operation of this Declaration, additional acreage adjacent to or near Stoney Glen South owned or acquired by the Developer during the period of development. Such property may be subjected to this Declaration as one parcel or as several smaller parcels at one time or at different times. The additions of such property authorized under this paragraph may increase the cumulative maximum number of Residential Lots authorized in the Properties by the Zoning Ordinance of the County of Chesterfield, Virginia, and, therefore, may alter the relative maximum potential voting strength of the various types of membership of the Association.

The additions authorized under this and the succeeding subsection shall be made by recording a Supplementary Declaration of Covenants and Restriction with respect to the additional property which shall extend the operation and effect of the Covenants to such additional property. The Supplementary Declaration may contain such complementary additions and/or modifications of the Covenants as may be necessary or convenient, in the sole judgment of the Developer, to reflect the different character, if any, of the added properties and as are not inconsistent with the plan of this Declaration, but such modifications shall have no effect upon the Property described in Section 1, Article II above, or upon any other prior additions to the Properties.

(b) Other Additions. Upon approval in writing of the Association pursuant to a simple majority of the vote of those present at a duly called meeting, the owner of any property who desires to add such property to the plan and operation of this Declaration and to subject it to the jurisdiction of the Association shall record a Supplementary Declaration of Covenants and



Restrictions with respect to the additional property which shall extend the operation and effect of these Covenants to such additional property. The additions of such property authorized under this subparagraph may increase the cumulative maximum number of Residential Lots authorized in the Properties by the Zoning Ordinance of the County of Chesterfield, Virginia, and, therefore, may alter the relative maximum potential voting strength of the various types of membership of the Association.

The Supplementary Declaration may contain such complementary additions and/or modifications of the Covenants as may be necessary or convenient, in the judgment of the Association, to reflect the different character, if any, of the added properties and as are not inconsistent with the plan of this Declaration, but such modifications shall have no effect upon the Property described in Section 1, Article II above, or upon any other prior additions to the Properties.

(c) Mergers. Upon merger or consolidation of the Association with another association, as provided for in the By-Laws of the Association, its property, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association, or in the alternative, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the Existing Property, together with the covenants established upon any other properties, as one plan. No merger or consolidation shall effect any revocation, change, or addition to the Covenants within the Existing Property, including, without limitation, the maximum limits on Assessments and dues of the Association, or any other matter substantially affecting the interests of Members of the Association.

(d) Additional lands which become subject this Declaration under the provisions of this Section II may in the future be referred to as a part of Stoney Glen South. Also, the name Stoney Glen South may be used by the Developer to refer to other nearby properties not subject to this Declaration.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. The Developer, every Owner, and any creditor who acquires title to the Properties or any portion thereof pursuant to foreclosure or any other proceeding or deed in lieu of foreclosure shall be Members of the Association. The Association may issue to each Member a membership card which shall expire upon sale by an Owner of his property in Stoney Glen South. Tenants shall not be Members of the Association. Every Owner shall be required to submit the name(s) of his Tenant(s) and the duration of their tenancy to the Secretary of the Association.

Section 2. Voting Rights. The Association shall have the following types of membership:

TYPE "A": Type "A" Members shall be all Owners, including the Developer, of Residential Lots, and shall be entitled to one (1) vote for each Residential Lot which a Member owns.

TYPE "B": The Type "B" Member shall be the Developer, which shall be entitled to elect a portion of the Board of Directors as set out in Section 4 of this Article III.

Payment of Special Assessments shall not entitle Type "A" Members to additional votes.

When any Property entitling the Owner to membership as a Type "A" Member of the Association is owned of record in the name of two (2) or more persons or entities, whether fiduciaries, joint tenants, tenants in common, tenants in partnership or in any other manner of joint or common ownership, or if two (2) or more persons or entities have the same fiduciary relationship respecting the same Property, then unless the instrument or order appointing them or creating the tenancy otherwise directs and it or a copy thereof is filed with the Secretary of the Association, their acts with respect to voting shall have the following effect:

- (1) if only one (1) votes, in person or by proxy, his act shall bind all;
- (2) if more than one (1) vote, in person or by proxy, each fraction shall be entitled to its proportionate share of the vote or votes.

The principles of this paragraph shall apply, insofar as possible, to execution of proxies, waivers, consents or objections, and for the purpose of ascertaining the presence of a quorum.

Section 3. Governance. The Association shall be governed by a Board of Directors consisting of three (3), five (5), seven (7), or nine (9) Members. The number and term of such Directors is to be determined in accordance with the provisions of the Articles of Incorporation of the Association. Except as may be otherwise provided in the Articles of Incorporation, there shall be two (2) classes of Directors: Class I Directors, who shall be elected by the Type "A" Members, and Class II Directors, who shall be elected by the Type "B" Member. The Board of Directors shall have the power to provide for staggered election of the Class I Directors in accordance with the provisions of the Articles of Incorporation.

Section 4. Election of The Board of Directors. (a) Each Type "A" Member may cast the total number of votes to which he is entitled for each vacancy to be filled by a Class I Director. Cumulative voting shall not be allowed.

(b) The Type "A" Members shall elect the Class I Director(s), and the Type "B" Member shall elect the Class II Director(s) according to the following formula:

- (1) At any time that the total number of Residential Lots placed on the Registration List of the Association is less than eighty (80%) percent of the maximum number of Residential Lots authorized in the Properties by the Zoning Ordinance of the County of Chesterfield, Virginia, the majority of the Board of Directors (fifty-one (51%) percent of the total number of Directors, rounded to the nearest whole

number) shall be the Class II Directors and shall be elected by the Type "B" Member. The remaining Directors shall be the Class I Director(s) and shall be elected by the Type "A" Members.

- (2) At any time that the total number of Residential Lots placed on the Registration List of the Association is equal to or greater than eighty (80%) percent of the maximum number of Residential Lots authorized in the Properties by the Zoning Ordinance of the County of Chesterfield, Virginia, the majority of the Board of Directors (fifty-one (51%) percent of the total number of Directors, rounded to the nearest whole number) shall be the Class I Directors and shall be elected by the Type "A" Members. The remaining Directors shall be the Class II Director(s) and shall be elected by the Type "B" Member.
- (3) For the purposes of this formula, the total number of Residential Lots placed on the Registration List of the Association and the maximum number of Residential Lots authorized in the Properties shall be determined by the Board of Directors as of the date on which notice of the meeting of the Members at which the Board of Directors is to be elected is mailed.

Section 5. Members to Have Power of Referendum in Certain Instances. Where specifically provided for herein, the Members, or some specific portion thereof, shall have the power to approve or reject certain actions proposed to be taken by the Association by Referendum. In the event fifty-one (51%) percent or more of the votes actually returned to the Association within the specified time shall be in favor of such action, the Referendum shall be deemed to "pass" and the action voted upon will be deemed to have been authorized by the Members; provided, however, that if a higher percentage vote required to "pass" shall be specifically expressed herein, that higher percentage shall control in that instance. The Board of Directors may not undertake any action requiring a Referendum without complying with the provisions hereof. At any time that the Type "A" Members have the ability to elect a majority of the Board of Directors, the Members may require a Referendum on any action of the Board of Directors by presenting to the Secretary of the Board within thirty (30) days of the taking of such action or ratification by the Board of its intent to take such action a petition signed by not less than forty (40%) percent of the Members.

Section 6. Quorum Required for Any Action Authorized at Regular or Special Meetings of the Association. The quorum required for any action which is subject to a vote of the Members at an open meeting of the Association (as distinguished from the Referendum) shall be as follows:

(a) The first time a meeting of the Members of the Association is called to vote on (i) an increase in the Maximum Regular Annual Assessment greater than that provided for by subparagraph (e) of Section 3 of Article V hereof, (ii) a Special Assessment as provided for by Section 4 of Article V hereof, (iii) the gift or sale of any parcel of land and improvements thereon designated as a Common Property as provided for by subparagraph (f) of Section 3 of Article IV hereof, (iv) an amendment to this Declaration as provided for by Section 2 of Article VIII hereof, or (v) the termination of this Declaration as provided for by Section 1 of Article VIII

hereof, the presence at the meeting of Members or proxies entitled to cast sixty (60%) percent of the total vote of the Membership required for such action shall constitute a quorum.

(b) The first time a meeting of the Members of the Association is called to vote on any action proposed to be taken by the Association, other than that described in subparagraph (a) above, the presence at the meeting of Members or proxies entitled to cast thirty (30%) percent of the total vote of the Membership required for such action shall constitute a quorum.

If the required quorum is not present at any meeting described in subparagraphs (a) or (b) above, with the exception of any meeting called to vote on the termination of this Declaration described in subparagraph (a(v)) above, another meeting or meetings may be called subject to the giving of proper notice and the required quorum at such subsequent meeting or meetings shall be one-half (1/2) of the required quorum at the preceding meeting.

Unless otherwise provided, any reference hereafter to "votes cast at a duly called meeting" shall be construed to be subject to the quorum requirements established by this Article III, Section 6, and any other requirements for such "duly called meeting" which may be established by the By-Laws of the Association. For the purpose of this section, "proper notice" shall be deemed to be given when given each Member not less than thirty (30) days prior to the date of the meeting at which any proposed action is to be considered.

Section 7. Proxies. All Members of the Association may vote and transact business at any meeting of the Association by proxy authorized in writing, provided, however, that Proxies shall not be required for any action which is subject to a Referendum, in which case the votes of all the Members polled shall be made by specifically provided ballots mailed or delivered to the Association.

Section 8. Ballots by Mail. When required by the Board of Directors, there shall be sent with notices of regular or special meetings of the Association a statement of certain motions to be introduced for vote of the Members and a ballot on which each Member may vote for or against each such motion. Each ballot which is presented at such meeting shall be counted in calculating the quorum requirements set out in Section 6 of this Article III, provided, however, such ballots shall not be counted in determining whether a quorum is present to vote upon motions not appearing on the ballot.

## ARTICLE IV

### PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 1. Members' Easements of Enjoyment in Common Properties. Subject to the provisions of these Covenants, the rules and regulations of the Association, and any fees or charges established by the Association, every Type "A" and "B" Member, and every guest of such Type "A" and "B" Member, shall have a right of easement of enjoyment in and to the Common Properties, and such easement shall be appurtenant to and shall pass with the title of every Residential Lot.

Employees of the Type "B" Member shall have access to and enjoyment of the Common Properties subject to rules and regulations and user fees established by the Board of Directors.

A Member's spouse, parents, and children who reside with such Member in Stoney Glen South shall have the same easement of enjoyment hereunder as a Member.

In those instances where a Residential Lot in Stoney Glen South is owned by two (2) or more persons (who do not have the relationship of spouse, parent, or child, one to the other) or by a corporation, such joint Owners and corporations shall annually appoint one (1) person as the "Primary Member." Such Primary Member shall have the same easement of enjoyment in the Common Properties as Members who own such property singularly. The remaining joint members and the principal officers of such corporation shall be entitled to an easement of enjoyment in the Common Properties by:

(1) Paying the same user fees as guest of Members, or

(2) By paying to the Association annually an amount equal to the Annual Assessment charged against the property in which he or she owns a fractional interest. The payment of such amount shall not entitle such remaining joint members or principal officers to additional votes in the Association.

The Board of Directors may grant certain Tenants and guests access to and enjoyment of the Common Properties subject to rules and regulations and user fees established by the Board of Directors.

Section 2. Title to Common Properties. (a) The Developer covenants that it shall convey by deed to the Association, at no cost to the Association, and subject to (i) all restrictions and limitations imposed by the Declaration of Rights, Restrictions, Affirmative Obligations and Conditions Applicable to All Property in Stoney Glen South ("General Property Covenants") recorded simultaneously herewith, including, without limitation, all rights of easement and rights of entry reserved unto the Developer, its successors and assigns in said Declaration, (ii) all other restrictions and limitations of record at the time of conveyance, (iii) any restrictions, limitations, conditions, or determinations as to the purposes and uses of the conveyed properties as stipulated in said deed, (iv) any commitments by the Developer to construct certain improvements thereon as stipulated in said deed, those intended Common Properties described in Section 4 of this Article IV hereof, and any other parcels of land and any improvements thereon now or hereafter designated as Intended Common Properties, and, upon such conveyance, such parcels of land and any improvements thereon shall become Common Properties.

(b) The Association shall not object to the designation by the Developer of any parcel of land or any improvements thereon as an Intended Common Property and shall not refuse to accept any Intended Common Property as a Common Property at such time as the Developer, in its sole and uncontrolled discretion, deems it advisable to convey such property to the Association.

(c) Upon designation by the Developer of any parcel of land and any improvements thereon as an Intended Common Property, or upon conveyance of any parcel of land and any

improvements thereon as a Common Property by the Developer, the Association shall immediately become responsible for all maintenance and operation of said property, and for such additional construction of improvements thereon as may be authorized by the Association's Board of Directors, subject to the General Property Covenants. It is the purpose of this provision to provide that the Association shall be responsible for all maintenance and operation of all Common Properties and Intended Common Properties, notwithstanding the fact that (i) the Developer shall convey such Intended Common Properties to the Association until such time as the Developer, in its sole and uncontrolled discretion deems it advisable to do so, subject to the provisions of Section 4 of this Article IV, and (ii) the Developer may elect in its sole and uncontrolled discretion to operate certain facilities within Intended Common Properties until such time as said facilities are actually conveyed to the Association.

(d) Notwithstanding anything in the foregoing to the contrary, the Developer hereby reserves the right to enter upon any Intended Common Property or Common Property for the purposes of constructing indoor and outdoor community facilities thereon, including, but not limited to, basketball courts, playgrounds, ball fields, gazebos, picnic shelters, picnic tables, parks, walking trails and bike trails. The provisions of this paragraph shall in no way create any obligation on the part of the Developer to construct any such facilities on said properties.

(e) Natural areas, trail areas, etc. may be designated from time to time as Intended Common Properties, and shall be conveyed in large or small parcels from time to time after the Developer has completed surveying and platting all adjacent subdivisions for Residential Lots which may abut such natural areas, trail areas, etc.

(f) The Developer shall not be required to convey the above referred to parcels where such conveyance would be prohibited under agreements existing on the date hereof, but, in such case, shall be allowed to postpone such conveyance, without penalty, until such time a said prohibition may be nullified.

Section 3.     Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) the right of the Association, in accordance with its By-Laws, to borrow money from the Developer or any lender to improve and/or maintain the Common Properties and provide services authorized herein and in aid thereof to mortgage said Properties provided, however, that any such mortgage is with the prior consent of two-thirds of the Members of the Association, which consent may be evidenced by petition or by an affirmative vote at a duly called meeting of the Association;

(b) the right of the Association to take such steps as are reasonably necessary to protect the above-described Properties against foreclosures;

(c) the right of the Association to suspend the rights and easements of enjoyment of any Member or Tenant or guest of any Member for any period during which the payment of any Assessment against property owned by such Member remains delinquent, and for any period not to exceed sixty (60) days for any infraction of its published rules and regulations, it being

understood that any suspension for either non-payment of any Assessment or a breach of the rules and regulations of the Association shall not constitute a waiver or discharge of the Member's obligations to pay the Assessment;

(d) the right of the Association to charge reasonable admission and other fees for the use of recreational facilities and services of the Common Properties;

(e) the right of the Developer or the Association by its Board of Directors to dedicate or transfer to any public or private utility drainage or utility easements on any part of the Common Properties;

(f) the right of the Association to give or sell all or any part of the Common Properties, including lease-hold interests, subject to (i) the Zoning Ordinance of County of Chesterfield, Virginia, (ii) the limitations and restrictions imposed by the General Property Covenants, and (iii) all other restrictions and limitations of record at the time of conveyance, to any public agency, authority, public service district, utility, or private concern for such purposes and subject to such conditions as may be agreed to by the Members, provided, however, that no such gift or sale of any parcel of land and improvements thereon, or determination as to the purposes or as to the conditions thereof, shall be effective unless such dedication, transfers, and determinations as to purposes and conditions shall be authorized by the affirmative vote of three-fourths (3/4) of the votes cast at a duly called meeting of the Association, subject to the quorum requirements established by Article III, Section 6(a), and unless written notice of the meeting and of the proposed agreement and action thereunder is sent to every Member of the Association at least thirty (30) days prior to such meeting. A true copy of such resolution together with a certificate of the results of the vote taken thereon shall be made and acknowledged by the President or Vice President and Secretary or Assistant Secretary of the Association and such certification shall be annexed to any instrument of dedication or transfer of any parcel of land and improvements thereon affecting the Common Properties prior to the recording thereof. Such certificates shall be conclusive evidence of authorization by the Members. The gift or sale of any personal property owned by the Association shall be determined by the Board of Directors in its sole and uncontrolled discretion; and

(h) the rights of reversion of the Lessor of any Common Properties leased by the Association.

Section 4. The Developer hereby covenants that, prior to January 1, 1999, it shall convey by deed to the Association, at no cost to the Association, and subject to all the restrictions and limitations of these Covenants and any other restrictions and limitations of record, any parcel of land and any improvements thereon designated from the date hereof until January 1, 1999, as an Intended Common Property through express, written notification by the Developer to the Association of intent to convey said property to the Association.

## ARTICLE V

### COVENANTS FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Developer covenants, and each Owner of any Residential Lot located within the Properties, whether or not it shall be so expressed in any deed or other conveyance, shall be deemed to covenant and agree to all the terms and provisions of this Declaration and to pay to the Association: (a) Annual Assessments or charges; and (b) Special Assessments or charges for the purposes set forth in this Article, such Assessments to be fixed, established and collected from time to time as hereinafter provided. The Annual and Special Assessments, together with such interest thereon and costs of collection thereof including a reasonable attorney's fee as hereinafter provided, shall be a charge and continuing lien on the real property and improvements thereon against which each such Assessment is made. Each such Assessment, together with such interest thereon and cost of collection thereof including a reasonable attorney's fee as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such real property at the time when the Assessment first became due and payable. In the case of co-ownership of a Residential Lot, all co-Owners shall be jointly and severally liable for the entire amount of the Assessment.

Section 2. Purpose of Assessments. The Annual Assessments shall be used exclusively for the improvement, maintenance, enhancement, enlargement, and operation of the Common Properties and Intended Common Properties, and to provide services which the Association is authorized to provide.

Section 3. Application of "Maximum" Assessment. The Maximum Regular Annual Assessment, as set forth in subparagraph (a) hereinbelow, and as is automatically increased annually by an inflation adjuster pursuant to the provisions of subparagraph (3) below, shall be levied by the Association. If, however, the Board of Directors of the Association, by majority vote, determines that the important and essential functions of the Association may be properly funded by an Assessment less than the Maximum Regular Annual Assessment, it may levy such lesser Assessment; provided, however, so long as the Developer is engaged in the development of Properties which are subject to the terms of this Declaration, the Association may not reduce Assessments below those set out in Section 3(a) immediately below without the written consent of the Developer. The levy of an Assessment less than the Maximum Regular Annual Assessment in one (1) year shall not affect the Board's right to levy an Annual Assessment equal to the Maximum Regular Annual Assessment in subsequent years.

If the Board of Directors shall levy less than the Maximum Regular Annual Assessment for any Assessment year, such Annual Assessment shall automatically be greater than the Annual Assessment levied for the previous Assessment year by a percentage equal to the inflation adjuster set out in subparagraph (e) below; provided, however, that the Board of Directors may, by majority vote, levy a greater or lesser Assessment if it shall determine that the important and essential functions of the Association will be properly funded by such greater or lesser Assessment.



If the Board of Directors shall levy less than the Maximum Regular Annual Assessment for any Assessment year and thereafter, during such Assessment year, determine that the important and essential function of the Association cannot be funded by such lesser Assessment, the Board may, by majority vote, levy a Supplement Assessment. In no event shall the sum of the initial and Supplemental Annual Assessments for that year exceed the applicable Maximum Regular Annual Assessment.

If the Board of the Association determines that the important and essential functions of the Association will not be properly funded in any one (1) year, or in any one (1) year and all subsequent years, without an increase in the Maximum Regular Annual Assessment, it may request approval of a specified increase in the Maximum Regular Annual Assessment for either one (1) year only, or for that one (1) year and all subsequent years, by the vote of the Members at a duly called meeting of the Association, subject to the quorum requirements established by Article III, Section 6(a). Should the Members vote in favor of such proposed increase, it shall be deemed approved and may be levied by the Board. An increase in the Maximum Regular Annual Assessment for one (1) year only pursuant to the provisions hereof shall in no way affect the Maximum Regular Annual Assessment for subsequent years or increases thereof in subsequent years.

(a) From and after January 1, 1988, the Maximum Regular Annual Assessment shall be one hundred twenty (\$120.00) dollars per Residential Lot, automatically increased each year thereafter by the inflation adjuster set forth in Section 3(e) of this Article.

(b) Property shall not be classified for purposes of these Covenants and these Annual Assessments as a Residential Lot until the first day of the quarter of the year following (i) the date of recording of the Plat in the Clerk's Office showing such lot, and (ii) the date of placement of such lot on the Developer's inventory list of lots available for sale to purchasers;

(c) Assessments shall be billed on such basis as may be determined by the Board of Directors. The billing schedule shall be the same for all Properties. All Assessment bills shall be due and payable ninety (90), thirty (30), or fifteen (15) days from the date of mailing of same as determined by the Board of Directors, provided, however, that if the Board of Directors elects to utilize a Billing Agent, the Billing Agent shall set the date on which Assessment bills shall be due and payable.

(d) The Board of Directors may authorize a Billing Agent to collect the Assessments. If the Board of Directors elects to sue a bank card or credit card service as such Billing Agent, the Board of Directors shall have the power to authorize the opening of a credit card account in the name of each Owner and the issuance of a credit card to each Owner for the payment of Assessments, subject to approval of the credit card service, and each such Owner shall be required to utilize the approved credit card account for payment of Assessments.

(e) From and after January 1, 2008, the Maximum Regular Annual Assessment shall be automatically increased each year by the percentage increase between first and last months of the thirteen (13) month period terminating at the end of the third (3rd) quarter of the previous year in the Consumer Price Index, U.S. City Average, All Items (1967-100) ("C.P.I.") issued by

the U.S. Bureau of Labor Statistics in its monthly report entitled "The Consumer Price Index, U.S. City Average and Selected Areas". If the C.P.I. is discontinued, then there shall be used the most similar index published by the United States Government that may be procured indicating changes in the cost of living.

Section 4. Special Assessments for Improvements and Additions. In addition to the Maximum Regular Annual Assessments authorized by Section 3 hereof, the Association may levy Special Assessments for the following purposes:

(a) construction, reconstruction, repair, or replacement of capital improvements upon the Common Properties or Intended Common Properties, including the necessary fixtures and personal property related thereto:

(b) additions to the Common Properties;

(c) to provide necessary facilities and equipment to offer the services authorized herein; or

(d) to repay any loan made to the Association to enable it to perform the duties and functions authorized herein.

Such Special Assessment, before being charged, must have received the approval of the Members of the Association by the favorable vote of seventy-five (75%) percent of the votes cast at a duly called meeting of the Association, subject to the quorum requirements established by Article III, Section 6(a). The notice of such meeting shall include one (1) statement from those Directors favoring the Special Assessment and one (1) statement from those Directors opposing the Special Assessment, if any, containing the reasons for those Directors' support and opposition for the Assessment. Neither statement shall exceed five (5) pages in length.

This provision shall be interpreted to mean that the Association may make in any one (1) year an Annual Assessment up to the maximum set forth in Section 3 of this Article V, plus an additional Special Assessment. Such Special Assessment in any one (1) year may not exceed a sum equal to the amount of the Maximum Regular Annual Assessment for such year except for emergency or repairs required as a result of storm, fire, natural disaster, or other casualty loss. The fact that the Association has made an Annual Assessment for an amount up to the Maximum Regular Annual Assessment shall not affect its right to make a Special Assessment during the year.

Section 5. Reserve Funds. The Association may establish reserve funds to be held in reserve in an interest drawing account or investments as a reserve for:

(a) major rehabilitation or major repairs;

(b) emergency and other repairs required as a result of storm, fire, natural disaster, or other casualty loss; and

(c) initial costs of any new service to be performed by the Association.

Section 6. Change in Maximum Amounts of Annual Assessments Upon Merger or Consolidation. The limitations of Section 3 hereof shall apply to any merger or consolidation in which the Association participates.

Section 7. Date of Commencement of Annual Assessments, Due Date. Notwithstanding anything in the foregoing to the contrary, the Annual Assessments provided for herein shall commence no earlier than January, 2008. The initial Annual Assessment on the actual Date of Commencement shall be prorated to reflect the remaining full quarters of the initial Assessment year.

Section 8. Duties of the Board of Directors. The Board of Directors shall fix the amount of the Annual Assessment and shall direct the preparation of an index of all Residential Lots on the Registration List and Annual Assessments and Special Assessments applicable thereto, which shall be kept in the Office of the Association and which shall be open to inspection by any Member. Written notice of Assessment shall thereupon be sent to every Member subject thereto.

The Association shall upon demand at any time furnish to any Owner liable for said Assessments a certificate in writing signed by an Officer of the Association, setting forth whether said Assessments have been paid. Such certificate shall be conclusive evidence against all but the Owner of payment of any Assessment therein stated to have been paid. If the Board of Directors authorizes a Billing Agent to collect Assessments, the certificate of the said Billing Agent shall be conclusive evidence against all but the Owner of payment of any Assessment therein stated to have been paid.

Section 9. Effect of Non-Payment of Assessment: The Personal Obligation of the Owner; the Lien; Remedies of Association. If the Annual Assessment or any Special Assessment is not paid within thirty (30) days of the due date thereof, then such Assessment shall become delinquent and shall (together with interest thereon at the maximum annual rate permitted by law from the due date and costs of collection thereof including a reasonable attorney's fee) become a charge and continuing lien on the land and all improvements thereon against which each such Assessment is made, in the hands of the then Owner, his heirs, devisees, personal representatives, and assigns.

If the Assessment is not paid within sixty (60) days after the due date, the Association may bring an action at law against the Owner personally and there shall be added to the amount of such Assessment the costs of preparing the filing of the Complaint in such action and a reasonable attorney's fee. In the event a judgment is obtained, such judgment shall include interest on the Assessment as above provided and a reasonable attorney's fee together with the costs of the action.

If the Board of Directors of the Association elects to utilize a Billing Agent to collect Assessments, interest which shall accrue on past-due sums shall be the maximum interest rate which such agent may lawfully charge.

Section 10. Subordination of the Lien. The Lien of the Assessments provided for herein shall be subordinate to the lien of any first deed of trust now or hereafter placed upon any Properties subject to Assessment, and in addition, shall be subordinate to the lien of the cost of corrective action provided for in the General Property Covenants. In the event a creditor acquires title to any Property subject to Assessment pursuant to foreclosure or any other proceeding or deed in lieu of foreclosure, said creditor shall be subject to Assessment.

Section 11. Annual Statements. The President, Treasurer, or such other Officer as may have custody of the funds of the Association shall annually, within ninety (90) days after the close of the fiscal year of the Association, prepare and execute under oath a general itemized statement showing the actual assets and liabilities of the Association at the close of such fiscal year, and a statement of revenues, costs and expenses. It shall be necessary to set out in the statement the name of any creditor of the Association owed more than One Thousand and no/100 (\$1,000.00) Dollars. Such Officer shall furnish to each Member of the Association who may make a written request therefor, a copy of such statement, within thirty (30) days after receipt of such request. Such copy may be furnished to the Member either in person or by mail.

Section 12. Annual Budget. The Board of Directors shall prepare and make available to all Members, at least sixty (60) days prior to the first day of each fiscal year, a budget outlining anticipated receipts and expenses for such fiscal year. The financial books of the Association shall be available for inspection by all Members at all reasonable time

## ARTICLE VI

### FUNCTIONS OF ASSOCIATION

Section 1. Ownership and Maintenance of Properties. The Association shall be authorized to own and/or maintain Common Properties, Intended Common Properties, equipment furnishings, and improvements devoted to the following uses:

(a) for roads, roadways, roadway medians and parkways along said roads or roadways, cul-de-sac islands, and neighborhood or other area entrances throughout the Properties;

(b) for sidewalks, walking paths or trails, and bicycle paths through the Properties;

(c) for neighborhood entrance signs, directional signs, and other area signs;

(d) for security services;

(e) for buildings used in maintenance functions;

(f) for providing any of the services which the Association is authorized to offer under Section 2 of this Article VI;

(g) for purposes set out in deeds by which Common Properties are conveyed to the Association, provided that such purposes shall be approved by the Members of the Association as set out in Section 4 of this Article VI; and

(h) for indoor and outdoor community facilities, including, but not limited to, basketball courts, playgrounds, ball fields, gazebos, picnic shelters, picnic tables, parks, walking trails and bike trails.

Section 2. Services. The Association shall be authorized but not required, except as specified in Section 3 of this Article VI, to provide the following services:

(a) cleanup and maintenance of all roads, roadways, roadway medians, parkways, cul-de-sac islands, neighborhood and other area entrances, streams, parks, sidewalks, walking trails, bike trails, Common Properties, Intended Common Properties, and Open Space Areas within the Properties, and also all public properties which are located within or in a reasonable proximity to the Properties such that their deterioration would affect the appearance of the Properties as a whole;

(b) landscaping and beautification of roads, roadways, roadway medians, parkways, cul-de-sac islands, neighborhoods and other area entrances, streams, parks, sidewalks, walking paths, bike trails, Common Properties, Intended Common Properties, and Open Space Areas;

(c) maintenance of neighborhood entrance signs, directional signs, and other area signs;

(d) lighting of roads, sidewalks, walking paths, bike trails, parking lots, and any recreational and community facilities located within the Properties;

(e) security, including, but not limited to, the employment of security guards for the protection of persons and property within the Existing Property, and assistance in the apprehension and prosecution of persons who violate the laws of the State of Virginia or the County of Chesterfield, Virginia, within the Properties;

(f) garbage and trash collection and disposal;

(g) insect and pest control to the extent that it is necessary or desirable in the judgment of the Board of Directors of the Association to supplement the service provided by the state and local governments;

(h) the services necessary or desirable in the judgment of the Board of Directors of the Association to carry out the Associations obligations and business under the terms of this document;

(i) to take any and all actions necessary to enforce all Covenants and Restrictions affecting the Properties and to perform any of the functions or services delegated to the Association in any Covenants or Restrictions applicable to the Properties;

(j) to set up and operate an Architectural Review Board in the event that the Association is designated by the Developer as the agent or the assign of the Developer for such purpose, pursuant to the provisions of Article VII;

(k) to conduct instructional, recreational, sports, crafts, social, and cultural programs of interest to Members, their families and guests;

(l) to construct improvements on Common Properties or Intended Common Properties for use for any of the purposes authorized in this Article, or as may be required to provide any of the services authorized in this Article;

(m) to provide administrative services, including, but not limited to, legal, accounting, and financial; and communication services, including, but not limited to, community newsletters and newspapers to inform Members of activities, notices of meetings, referendums, and other issues and events of community interest;

(n) to provide liability and hazard insurance covering improvements and activities on the Common Properties;

(o) to construct mailboxes, signs, and other standard features for use throughout the Properties; and

(p) to provide any or all of the above listed services to another association of Owners of real property under a contract, the terms of which must be approved by the Board of Directors.

Section 3. Minimum List of Functions and Services. The “Minimum List of Functions and Services” shall establish and define the minimum level of functions and services which the Association must furnish to its Members. So long as the Developer is engaged in the development of Properties which are subject to the terms of this Declaration, the Association shall not reduce the level of functions and services it furnishes to its Members below such minimum level without the prior written consent of the Developer. The “Minimum List of Functions and Services” shall obligate the Association to:

(a) provide or procure the administrative services necessary to carry out the Association's obligations and business under the terms of this Declaration, the Articles of Incorporation of the Association, and the By-Laws of the Association, including, but not limited to, legal, accounting, financial, and communications services;

(b) administer and enforce the covenants and restrictions established in this Declaration, including, but not limited to, the following actions:

(1) set Assessments, levy such Assessments, notify the Members of such Assessments, and collect such Assessments;

(2) prepare accurate indexes of Members, Residential Lots, Votes, Assessments, the total number of Residential Lots placed on the Registration List of the Association, the maximum number of Residential Lots authorized in the Properties by the zoning Ordinance of the County of Chesterfield, Virginia, and the Maximum Regular Annual Assessment;

(3) operate an Architectural Review Board in the event that the Association is designated by the Developer as the agent or the assign of the Developer for such purpose;

(4) maintain and operate all Common Properties and Intended Common Properties;

(5) hold Annual Meetings, Special Meetings, and Referendums as required, hold elections for the Board of Directors as required, and give Members proper notice as required; and

(6) prepare annual statements and annual budgets, and shall make the financial books of the Association available for inspection by Members at all reasonable times;

(c) should the Developer appoint the Association its agent for the administration and enforcement of any of the provisions of the General Property Covenants or any other covenants and restrictions of record, assume such responsibility and any obligations which are incident thereto;

(d) should the Developer assign to the Association any of the rights reserved unto it in the General Property Covenants or any other covenants and restrictions of record, assume the responsibility of administering and enforcing said rights, and shall assume any obligations which are incident thereto;

(e) provide appropriate liability and hazard insurance coverage for improvements and activities on all Common Properties;

(f) provide appropriate Directors' and Officers' Legal Liability Insurance, and indemnify persons pursuant to the provisions of the Articles of Incorporation of the Association;

(g) keep a complete record of all its acts and corporate affairs;

(h) provide regular and thorough cleanup of all roads, roadways, roadway medians, parkways, cul-de-sac islands, neighborhood and other area entrances, and bike trails throughout the Properties, including, but not limited to, mowing grass on all roadsides, cul-de-sac islands, entrances, and bike trails; landscape maintenance on all roadsides, cul-de-sac islands, entrances, and bike trails; pickup and disposal of trash on all roads, roadsides, cul-de-sac islands, entrances, and bike trails. Such cleanup as is possible shall begin within an individual residential neighborhood as soon as construction of dwellings has commenced within said neighborhood;

(i) provide general maintenance of all neighborhood entrance signs, directional signs, and other area signs, including, but not limited to, painting, repair work, and replacement as needed:

(j) provide regular and thorough maintenance and cleanup of all Common Properties and Intended Common Properties, including, but not limited to, mowing of grass, fertilization as needed, landscape maintenance as needed, pickup and disposal of trash, washing down of picnic tables and benches as needed, and painting, repairs to and replacement of all improvements as needed; and

Section 4. Obligation of the Association. The Association shall not be obligated to carry out or offer any of the functions and services specified by the provisions of this Article VI except as specified in Section 3 of this Article VI. The functions and services to be carried out or offered by the Association at any particular time shall be determined by the Board of Directors taking into consideration the funds available to the Association and the needs of the Members of the Association. The functions and services which the Association is authorized to carry out or to provide may be added to or reduced, subject to the provisions of Section 3 of this Article VI, at any time upon the affirmative vote of seventy-five (75%) percent of the votes cast by the Type "A" Members at a duly called meeting of the Association.

Section 5. Mortgage and Pledge. The Board of Directors shall have the power and authority to obtain loans to be used by the Association in performing its authorized functions and services and to mortgage the property of the Association and to pledge the revenues of the Association as security for such loans, provided that any such mortgage is with the prior consent of two-thirds of the Members of the Association, which consent may be evidenced by petition or by an affirmative vote of two-thirds of the Association. The Developer may, but shall not be required, to make loans to the Association. Notwithstanding anything in this Declaration to the contrary, the Association shall not be allowed to reduce the level of the Annual Assessment below the limit of the Maximum Regular Annual Assessment at any time there are outstanding any amounts due the Developer as repayment of any loans made by the Developer to the Association without the express written consent of the Developer.

Section 6. Maintenance of Property Not Owned by the Association. The Association shall be authorized to render services of a governmental nature not furnished by the local government in the case of maintenance of property not owned by it.

## ARTICLE VII

### THE GENERAL PROPERTY COVENANTS AND ARCHITECTURAL CONTROL

Section 1. The General Property Covenants. Pursuant to the provisions of the General Property Covenants, the Developer reserved the right to appoint the Association its agent for the purpose of administering and enforcing, in whole or in part, the rights reserved unto the Developer in said General Property Covenants, including, but not limited to, the right to approve (or disapprove) plans, specifications, color, finish, plot plan, land management plan, and construction schedules for any or all buildings or structures to be erected within any or all of the properties subject to said General Property Covenants. Such appointment may be temporary or permanent, and shall be subject to any conditions, limitations, or restrictions which the Developer, in its sole and uncontrolled discretion, may elect to impose. Upon any such



appointment of the Association as agent by the Developer, the Association shall assume any obligations which are incident thereto.

In addition to the foregoing, the Developer reserved the right to assign in whole or in part to the Association its rights reserved in the General Property Covenants to grant approvals (or disapprovals), to establish rules and regulations, to administer and enforce the provisions of said General Property Covenants, and any or all other rights reserved therein by the Developer. The assignment of such rights shall be subject to any conditions, limitations, or restrictions which the Developer, in its sole and uncontrolled discretion, may elect to impose at the time of assignment. Following the assignment of such rights, the Association shall assume all of the Developer's obligations which are incident thereto (if any), and the Developer shall have no further obligation or liability with respect thereto. The assignment of such right or rights by the Developer to the Association shall be made by written instrument which shall be recorded in the Clerk's Office.

Notwithstanding anything in the foregoing to the contrary, so long as the Developer, its successors and assigns, is the owner of property subject to the provisions of the General Property Covenants, the Developer, in addition to and jointly with the Association, shall retain all rights of easement reserved unto it in said General Property Covenants, and shall, furthermore, retain all rights of entry granted unto it in said General Property Covenants for the purposes of correcting, repairing, enhancing, improving, cleaning, preserving, clearing out, removing, or taking any action to prevent a violation of said General Property Covenants, and the retention of said rights of easement and entry by the Developer shall in no way create any obligation on the part of the Developer to perform any affirmative action.

Section 2. The Architectural Review Board. Should the Developer designate the Association its agent or its assign for the purpose of administering and enforcing, in whole or in part, the rights reserved unto the Developer in the General Property Covenants to approve (or disapprove) plans, specifications, color, finish, plot plan, landscape plan, and construction schedules for any or all buildings or structures to be erected within any or all of the Properties as specified in Section 1 hereinabove, the Association shall establish and operate an Architectural Review Board for the purpose of administering and enforcing such approvals (or disapprovals).

The Architectural Review Board shall be composed of at least three (3) but not more than eleven (11) Members, all of whom shall be appointed by the Board of Directors of the Association. At least one (1) Member of the Association other than the Developer shall be a Member of the Architectural Review Board at all times.

## ARTICLE VIII

### GENERAL PROVISIONS

Section 1. Duration. These Covenants and any amendments thereto shall run with and bind the land subject hereto, and shall inure to the benefit of and be enforceable by the Association, the Developer, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a period of thirty (30) years from the date of this Declaration. Upon the expiration of said thirty (30) year period, this Declaration shall be

automatically extended for successive periods of ten (10) years. The number of ten (10) year extension periods hereunder shall be unlimited, provided, however, that there shall be no extension of this Declaration if during the last year of the initial thirty (30) year period, or during the last year of any subsequent ten (10) year extension period, at a duly called meeting of the Association, seventy-five (75%) percent or more of the total vote entitled to be cast by all the Members of the Association shall vote in favor of terminating this Declaration at the end of its then current term. The presence at the meeting of Members or proxies entitled to cast seventy-five (75%) percent of the total vote of the Membership shall constitute a quorum. It shall be required that written notice of any meeting at which such a proposal to terminate this Declaration is to be considered, setting forth the fact that such a proposal will be considered, shall be given each Member at least thirty (30) days in advance of said meeting. In the event that the Members of the Association vote to terminate this Declaration, the President and Secretary of the Association shall execute a certificate which shall set forth the Resolution of Termination adopted by the Association, the date of the meeting of the Association at which such Resolution was adopted, the date that Notice of such Meeting was given, the total number of votes of Members of the Association, the total number of votes required to constitute a quorum at a meeting of the Association, the total number of votes present at said meeting, the total number of votes necessary to adopt a Resolution terminating this Declaration, the total number of votes cast against such Resolution. Said certificate shall be recorded in the Clerk's Office and may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Declaration.

Section 2. Amendments. All proposed amendments to this Declaration shall be submitted to a vote of the Members at a duly called meeting of the Association subject to the quorum requirements established by Article III, Section 6(a). Any proposed amendment shall be deemed approved if seventy-five (75%) percent of the votes cast at such meeting vote in favor of such proposed amendment. Notice shall be given each Member at least thirty (30) days prior to the date of the meeting at which such proposed amendment is to be considered. If any proposed amendment to this Declaration is approved by the Members as set forth above, the President and Secretary of the Association shall execute an Addendum to this Declaration which shall set forth the amendment, the effective date of the amendment (which in no event shall be less than sixty (60) days after the date of the meeting of the Association at which such amendment was adopted), the date of the meeting of the Association at which such amendment was adopted, the date that notice of such meeting was given, the total number of votes of Members of the Association, the total number of votes required to constitute a quorum at a meeting of the Association, the total number of votes present at said meeting, the number of votes necessary to adopt the amendment, the total number of votes cast in favor of such amendment and the total number of votes cast against the amendment. Such Addendum shall be recorded in the Clerk's Office.

So long as the Developer, as the Type "B" Member, is entitled to elect a majority of the Members of the Board of Directors, no amendment of this Declaration shall be made without the consent of the Developer.

Section 3. Notices. Any notice required to be sent to any Member under the provisions of this Declaration shall be deemed to have been properly sent, and notice thereby given, when

delivered personally or sent by mail, with the proper postage affixed, to the address appearing on the Association's Membership list. Notice to one (1) of two (2) or more co-Owners or co-Tenants of a Residential Lot shall constitute notice to all Co-Owners or co-Tenants. It shall be the obligation of every Member to immediately notify the Secretary of the Association in writing of any change of address. Any person who becomes a Member following the first day in the calendar month in which said notice is delivered or mailed shall be deemed to have been given notice if notice was given to his predecessor in title.

Section 4. Enforcement. Enforcement of these Covenants shall be by and proceeding at law or in equity against any person or persons violating or attempting to violate or circumvent any covenant or restriction, either to restrain violation or to recover damages, and against the land and to enforce any lien created by these Covenants; and failure by the Association or any Member or the Developer to enforce any covenant or restriction herein contained for any period of time shall in no event be deemed a waiver or estoppel of the right to enforce same thereafter.

Section 5. Severability. Should any covenant or restriction herein contained, or any Article, Section, Subsection, sentence, clause, phrase or term of this Declaration be declared to be void, invalid, illegal, or unenforceable, for any reason, by the adjudication of any Court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no wise affect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

Section 6. Interpretation. The Board of Directors of the Association shall have the right to determine all questions arising in connection with this Declaration, and to construe and interpret its provisions, and its determination, construction, or interpretation shall be final and binding. In all cases, the provisions of this Declaration shall be given that interpretation or construction that will best tend toward the consummation of the general plan of improvements.

Section 7. Authorized Action. All actions which the Association is allowed to take under this instrument shall be authorized actions of the Association if approved by the Board of directors of the Association in the manner provided for in the By-Laws of the Association, unless the terms of this instrument provide otherwise.

Section 8. Other Agreements. Notwithstanding anything contained herein to the contrary, all the provisions of these Covenants shall be subject to and conform with the provisions of:

(a) the Zoning Ordinance of the County of Chesterfield, Virginia, and the rules and regulations promulgated thereunder, as may from time to time hereafter be amended or modified;

(b) the Master Plan for the development of Stoney Glen South as approved by the Board of Supervisors of the County of Chesterfield as may from time to time hereinafter be amended or modified; and

(c) the General Property Covenants recorded contemporaneously herewith in the Clerk's Office. In the event of any conflict between this Declaration and the General Property Covenants the General Property Covenants shall prevail.

None of the provisions of this Section (6) are or shall in any way be construed to be or to constitute a conveyance, transfer, disposition, waiver or relinquishment of any right, title, and interest of the Developer or the Association, as their respective rights, titles, and interests may appear, in and to or under any of the above referenced instruments or documents to or for the benefit of any other person, firm, or corporation.

Section 9. Limited Liability. In connection with all reviews, acceptances, inspections, permissions, consents or required approvals by or from the Developer and/or the Association contemplated under this Declaration, the Developer and/or the Association shall not be liable to an Owner or to any other person on account of any claim, liability, damage, or expense suffered or incurred by or threatened against an Owner or such other person and arising out of or in any way relating to the subject matter of any such reviews, acceptances, inspections, permissions, consents or required approvals, whether given, granted, or withheld.

Section 10. Termination of Association. In the event that this Declaration be declared to be void, invalid, illegal, or unenforceable in its entirety, or in such a significant manner that the Association is not able to function substantially as contemplated by the terms hereof, for any reason, by the adjudication of any Court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, and such adjudication occurs within ten (10) years of the date of this Declaration, all Common Properties belonging to the Association at the time of such adjudication shall revert to the Developer, and the Developer shall own and operate said Common Properties as Trustee for the use and benefit of Owners within the Properties as set forth below. If said adjudication shall occur on a date more than ten (10) years after the date of this Declaration, or if the Members of the Association should vote not to renew and extend this Declaration as provided for in Article VIII, Section 1, all Common Properties owned by the Association at such time shall be transferred to a Trustee appointed by the Circuit Court of Chesterfield County, Virginia, which Trustee shall own and operate said Common Properties for the use and benefit of Owners within the Properties as set forth below:

(a) Each Residential Lot located within the Properties shall be subject to an Annual Assessment which shall be paid by the Owner of each such Residential Lot to the Developer or Trustee, whichever becomes the successor in title to the Association. The amount of such Annual Assessment and its due date shall be determined solely by the Developer or the Trustee, as the case may be, but the amount of such Annual Assessment on any particular Residential Lot shall not exceed the amount actually assessed against that Residential Lot in the last year that assessments were levied by the Association, subject to the annual inflation adjustments set forth in subparagraph (b) immediately below.

(b) The Maximum Regular Annual Assessment which may be charged by the Developer or Trustee hereunder on any particular Residential Lot may be automatically increased each year by an amount equal to the C.P.I. The actual amount of such increase in the Maximum Regular Annual Assessment on a Residential Lot shall equal the Maximum Regular

Annual Assessment on such Residential Lot for the previous year multiplied by the C.P.I. If the C.P.I. is discontinued, then there shall be used the most similar index published by the United States Government that may be procured indicating changes in the cost of living.

(c) Any past due Annual Assessment together with interest thereon at the maximum annual rate allowed by law from the due date and all costs of collection including reasonable attorney's fees shall be a personal obligation of the Owner at the time the Annual Assessment became past due, and it shall also constitute and become a charge and continuing lien on the Residential Lot and all improvements thereon, against which the Assessment has been made, in the hands of the then Owner, his heirs, devisees, personal representatives and assigns.

(d) The Developer, or the Trustee, as the case may be, shall be required to use the funds collected as Annual Assessments for the operation, maintenance, repair, and upkeep of the Common Properties. The Developer or Trustee may charge as part of the cost of such functions the reasonable value of its services in carrying out the duties herein provided. Neither the Developer nor the Trustee shall have the obligations to provide for operation, maintenance, repair, and upkeep of the Common Properties once the funds provided by the Annual Assessment have been exhausted.

(e) The Developer shall have the right to convey title to the Common Properties, and to assign its rights and duties hereunder, provided that the transferee accepts such Properties subject to the limitations and uses imposed hereby and affirmatively acknowledges its acceptance of the duties imposed hereby.

(f) The Trustee shall have the power to dispose of the Common Properties free and clear of the limitations imposed hereby; provided, however, that such disposition shall first be approved in writing by seventy-five (75) percent of the Owners of Properties or in the alternative shall be found to be in the best interest of the Owners of Property by the Circuit Court of Chesterfield County, Virginia. The proceeds of such a sale shall first be used for the payment of any debts or obligations constituting a lien on the Common Properties, then for the payment of any obligations incurred by the Trustee in the operation, maintenance, repair, and upkeep of such Properties, then for the payment of any obligations distributed among the Owners of Property, exclusive of the Trustees, in a proportion equal to the portion that the Maximum Regular Annual Assessment on property owned by a particular Owner bears to the total Maximum Regular Annual Assessments for all property located within the Properties.

IN WITNESS WHEREOF, the Association and the Developer have caused this instrument to be executed and their seals attached by their duly authorized officers.

### **REGULAR RESTRICTIVE COVENANTS**

WHEREAS, STONEY GLEN SOUTH ASSOCIATES LIMITED PARTNERSHIP, a Virginia limited partnership ("Developer"), is the owner of certain lands located within a community known as "Stoney Glen South" in Chesterfield County, Virginia.

WHEREAS, the Developer wishes to declare certain restrictive covenants affecting certain lands in Stoney Glen South.

NOW, THEREFORE, the Developer does hereby declare that the covenants contained herein shall be covenants running with the land and shall apply to the lands described in Exhibit "A" attached hereto and such additions thereto as may hereinafter be made pursuant to paragraph 4.4 of Part IV hereof. The Developer reserves in each instance the right to add additional restrictive covenants in respect to lands to be conveyed in the future within the Properties, or to limit therein the application of this Declaration.

#### DEFINITIONS

"Stoney Glen South" when used herein shall refer to the lands in Chesterfield County, Virginia, which are shown as a part of Stoney Glen South on the Developer's Master Plan as revised from time to time.

Whenever used herein, the term "Developer" or "the Developer" shall refer to Stoney Glen Associates Limited Partnership, a Virginia limited partnership, its successors and assigns, and any agent or agents appointed by Stoney Glen South Associates Limited Partnership, its successors and assigns, to act on its behalf for the purpose of administering or enforcing, in whole or in part, the rights reserved unto the Developer in this Declaration.

Whenever used herein, the term "Association" shall refer to Stoney Glen South Association, Inc., a Virginia non-profit, non-stock corporation, its successors and assigns, and any other community or owners association within Stoney Glen South organized or to be organized, by the Developer or by others with the consent of the Developer.

The terms "Property" and "Properties" when used herein shall refer to any tract of land or subdivision thereof in Stoney Glen South which has been subjected to the provisions of this Declaration or any Supplemental Declaration under the provisions of paragraph 4.4 of Part IV hereof, as may be referenced in deeds issued by the Developer or any third party with the consent of the Developer, including without limitation, all that tract or parcel of land, situate, lying and being in Chesterfield County, Virginia, which is more particularly described in Exhibit "A" attached hereto and by specific reference made a part hereof.

The terms "Property Owner", "Owner of Property", and "Owner" when used in this Declaration shall mean and refer to all owners of an interest in real property in Stoney Glen South which has been subjected to the provisions of this Declaration.

The term "Master Plan" when used in this Declaration shall mean and refer to the drawing which represents the conceptual plan for the future development of Stoney Glen South. Since the concept of the future development of Stoney Glen South is subject to continuing revision and change by the Developer, present and future references to the "Master Plan" shall be references to the latest revision thereof.

The term "Open Space" or "Open Space Areas" when used in this Declaration shall mean and refer to all those parcels and tracts of land within the Properties designated on the Master Plan or on recorded plats as "Open Space".

The covenants and restrictions below will be referred to as the General Property Covenants of July \_\_, 1990, will be recorded in the Clerk's Office of the Circuit Court of Chesterfield County, Virginia, ("Clerk's Office") and may be incorporated by reference in deeds to real property issued by the Developer by reference to the book and page of recording in the land records of said Clerk's Office.

PART I  
COVENANTS, RESTRICTIONS AND AFFIRMATIVE  
OBLIGATIONS APPLICABLE TO ALL  
PROPERTIES IN STONEY GLEN SOUTH

The primary purpose of these covenants, restrictions and affirmative obligations ("Covenants") and the foremost consideration in the origin of same has been the creation of a community which is aesthetically pleasing and functionally convenient. The establishment of certain objective standards relating to design, size and location of dwellings and other structures makes it impossible to take full advantage of the individual characteristics of each parcel of Property and of technological advances and environmental values. For this reason such standards are not established by these Covenants. However, in order to implement the purposes of these Covenants, the Developer may establish and amend from time to time objective standards and guidelines, including, but not limited to, Building Guidelines, Uniform Sign Regulations, Uniform Mailbox Regulations, and Landscape Guidelines as such terms are defined hereinafter, which shall be in addition to and more restrictive than these Covenants, and which shall be binding on all Property Owners within Stoney Glen South.

1.1. Building Approvals. No building, fence, or other structure shall be erected, placed, or altered, nor shall a building permit for such improvement be applied for on any Property in Stoney Glen South until the proposed building plans, specifications, exterior color or finish, plot plan (showing the proposed location of such building or structure, drives, and parking areas), and construction schedule shall have been approved by the Developer. In addition, the Developer may, at its election, require prior written approval of a landscape plan. The Developer further reserves the right to promulgate and amend from time to time architectural standards and construction specifications (hereinafter referred to as the "Building Guidelines") for specific neighborhoods and areas or for all Properties within Stoney Glen South, and such Building Guidelines shall establish, define, and expressly limit those standards and specifications which will be approved in said neighborhoods and areas or within the Properties, including, but not limited to, architectural style, exterior color or finish, roofing material, siding material, driveway material, fencing material, landscape design, and construction technique. No alteration in the exterior appearance of any building, fence or structure, including exterior color or finish, shall be made without like prior approval by the Developer. One (1) copy of all plans and related data shall be furnished to the Developer for its records. In the event approval of such plans is neither granted nor denied within thirty (30) days following receipt by the Developer of written demand for approval, the provisions of this paragraph shall be thereby waived.

(b) In order to assure that buildings, fences and other structures will be located and staggered so that the maximum view, privacy, sunlight, and breeze will be available to each building or structure within the confines of each Property, and to assure that structures will be located with regard to the topography of each Property, taking into consideration the location of large trees and other aesthetic and environmental considerations, the Developer reserves the right to approve the precise site and location of any building, fence or structure on any Property in Stoney Glen South. Such location shall be determined only after reasonable opportunity is afforded the Property Owner to recommend a specific site. The provisions of this paragraph shall in no way be construed as a guarantee that the view, privacy, sunlight, or breeze available to a building or structure on a given Property shall not be affected by the location of a building or structure on an adjacent Property.

1.2. Tree Removal. No trees measuring six (6) inches or more in diameter at a point two feet above ground level may be removed without the prior approval of the Developer. Approval for the removal of trees located within ten (10) feet of a building or within ten (10) feet of the approved site for such building will be granted unless such removal will substantially decrease the beauty of the Property.

1.3 Landscape Guidelines. The Developer reserves the right to promulgate and amend from time to time landscape guidelines (the "Landscape Guidelines") which shall establish approved standards, methods, and procedures for landscape management on specific Properties in Stoney Glen South, and such authorized standards, methods, and procedures may be utilized by the Owners of such specified Properties without prior written approval by the Developer; provided, however, the provisions of this paragraph 1.3 shall in no way constitute a waiver of the requirement to receive prior written approval for the removal of specified trees pursuant to paragraph 3 above.

1.4. Signs. Except as may be required by legal proceedings, no sign shall be erected or maintained on any Property by anyone, including, but not limited to, a Property Owner, a tenant, a realtor, a contractor, or a subcontractor, until the proposed sign size, color and content and the number and location of sign(s) shall have been approved by the Developer. The Developer further reserves the right to promulgate and amend from time to time uniform sign regulations ("the Uniform Sign Regulations") which shall establish standard design criteria for all signs, including, but not limited to, real estate sales signs, erected upon any Property in Stoney Glen South.

1.5. Mailboxes. No mailbox shall be erected or maintained on any Property until the proposed mailbox design, color, and location have been approved by the Developer. No alteration in the exterior appearance of any mailbox shall be made without like prior written approval by the Developer. The Developer further reserves the right to establish uniform mailbox regulations (the "Uniform Mailbox Regulations") which shall define standard design criteria for all mailboxes erected upon any Property in Stoney Glen South.

1.6. Maintenance. It shall be the responsibility of each Property Owner, tenant, contractor, or subcontractor to prevent the development of any unclean, unsightly, unkempt, unhealthy, or unsafe conditions of buildings or grounds on any Property which shall tend to



substantially decrease the beauty or safety of Stoney Glen South, the neighborhood as a whole, or the specific area.

1.7. Parking. Each Property Owner shall provide space for the parking of automobiles off public streets prior to the occupancy of any building or structure constructed on said Property, in accordance with reasonable standards established by the Developer.

1.8. Sewage Disposal. Prior to the occupancy of a building or structure on any Property, proper and suitable provisions shall be made for the disposal of sewage by connection with the sewer mains of the Chesterfield County public sewer system or other means of sewage disposal if other means are approved by Chesterfield County and the Developer for use in Stoney Glen South.

1.9. Public Water. Prior to the occupancy of a building or structure on any Property, proper and suitable provisions for water shall be made by connection with the water lines of the Chesterfield County public water system or any other water system approved by Chesterfield County and the Developer for use in Stoney Glen South.

1.10. Utility Easements. The Developer hereby reserves a perpetual, alienable, and releaseable easement and right on, over, and under the Properties to erect, maintain, and use electric, Community Antenna Television ("C.A.T.V."), and telephone poles, wires, cables, conduits, drainage ways, sewers, water mains, and other suitable equipment for the conveyance and use of electricity, telephone equipment, C.A.T.V., gas, sewer, water, drainage, or other public conveniences or utilities on, in, or over those portions of such Property as may be reasonably required for utility line purposes; provided, however, that no such utility easement shall be applicable to any portion of such Property as may (a) have been used prior to the installation of such utilities for construction or a building whose plans were approved pursuant to these Covenants by the Developer, or (b) be designated as the site for a building on a plot plan for erection of a building which has been approved in writing by said Developer. These easements and rights expressly include the right to cut any trees, bushes, or shrubbery, make any gradings of the soil, or take any other similar action reasonably necessary to provide economical and safe utility installation and maintain reasonable standards of health, safety, and appearance. The Developer further reserves the right to locate wells, pumping stations, siltation basins, and tanks within Stoney Glen South in any Open Space or on any Property designated for such use on the applicable plat of said Property, or to locate same upon any Property with the permission of the Owner of such Property.

1.11. Antenna. No television antenna, radio receiver, radio sender, or other similar device shall be attached to or installed on any Property or on the exterior portion of any building or structure on any Property except as follows:

(a) The provisions of this paragraph shall not prohibit the Developer from installing or approving the installation of equipment necessary for a master antenna system, C.A.T.V., mobile radio systems, or other similar systems within the Properties, pursuant to the provisions of paragraph 11 above;

(b) Should C.A.T.V. services be unavailable and good television reception not be otherwise available, a Property Owner may make written application to the Developer for permission to install a television antenna, stating the proposed antenna's size, height, color, location and design, and such permission shall not be unreasonably withheld; and

(c) No satellite dish antenna in excess of \_\_ inches in diameter shall be installed upon any Property or attached to the exterior portion of any building or structure on any Property.

1.12. Fences. No chain link fence shall be erected or maintained on any Property.

1.13. Dog Pens. No dog pen shall be erected or maintained on any Property until the proposed dog pen design, color, fencing material, size, and location have been approved in writing by the Developer. No alteration in the exterior appearance of any dog pen shall be made without like prior written approval by the Developer.

## PART II ADDITIONAL RESTRICTIONS AFFECTING RESIDENTIAL LOTS

2.1. Definition. "Residential Lots" or "Lots" as used in this Part II shall mean and refer to all those parcels or tracts of land within the Properties intended for subdivision or subdivided into Properties or lots intended for the construction of a detached house or single family dwelling unit (hereinafter referred to as a "dwelling unit").

2.2. Minimum Size. Plans required under paragraph 1.1 of Part I of these Covenants will not be approved unless the proposed dwelling unit or any other structures will have the minimum square footage of enclosed dwelling space specified in the pertinent sales contract and deed. The term "enclosed dwelling space" shall not include garages, terraces, decks, open porches, screened porches, and similar areas.

2.3. Other Restrictions.

(a) All Residential Lots shall be used for residential purposes, recreational purposes incidental thereto, and for customary accessory uses. The use of a portion of a dwelling unit on a Residential Lot as an office by the Owner or tenant thereof shall be considered a residential use if such use does not create undue customer or client traffic, as determined by the Developer, to and from the unit or the Property.

(b) No structure, except as hereinafter provided, shall be erected, altered, placed, or permitted to remain on any Residential Lot other than one (1) detached single family dwelling and one (1) small lone-step, accessory building which may include a detached private garage, provided the use of such accessory building does not overcrowd the Property, as determined by the Developer, and provided, further, that such building is not used for any

activity normally conducted as a business. Such accessory building may not be constructed prior to the construction of the main building.

(c) A guest suite or like facility without a kitchen may be included as part of the main dwelling or accessory building on any Residential Lot, but such suite may not be rented or leased except as part of the entire premises including the main dwelling, and provided, however, that such suite would not result in over-crowding the Property, as determined by the Developer.

(d) The provisions of this paragraph 2.3 shall not prohibit the Developer from using any dwelling units or accessory buildings as models. In addition, the Developer may grant permission to any builder to use any specific dwelling unit or accessory building as a model; selection of the particular dwelling unit or accessory building and any rules or regulations governing the use of such dwelling unit or accessory building as a model shall be determined by the Developer.

#### 2.4. Completion of Construction.

(a) The exterior of each dwelling unit and all other structures must be completed within one (1) year after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the Owner or builder due to strikes, fires, national emergency or natural calamities. Dwelling units and other structures may not be temporarily or permanently occupied until the exteriors thereof have been completed. During the continuance of construction, the Owner of each Residential Lot shall require his contractor to maintain the Lot in a reasonably clean and uncluttered condition, pursuant to the provisions of paragraph 1.6 of these Covenants.

(b) The failure to complete the exterior of any dwelling unit or any other structure within the time limit set forth in paragraph 2.4(a) above shall constitute a violation and breach of these Covenants. The Developer hereby reserves a perpetual, alienable, and releasable easement and right on, over, and under all Residential Lots for the purpose of taking any action necessary to effect compliance with paragraph 4(a) above, including, but not limited to, the right to enter upon any Property for the purpose of completing the exterior of such dwelling unit or any other structure which is in violation of paragraph 2.4 (a).

#### 2.5. Garbage.

(a) Each Residential Lot Owner shall provide a screened area to serve as a service yard and an area in which garbage receptacles, fuel tanks or similar storage receptacles, electric and gas meters, air conditioning equipment, clotheslines, and other unsightly objects must be placed or stored in order to conceal them from view from the road and adjacent Properties. Pursuant to the provisions of paragraph 1.1, plans for such screened area delineating the size, design, specifications, exterior color or finish, and location must be approved by the Developer prior to construction. No alteration in the exterior appearance of any screened area shall be made without like prior written approval by the Developer. Garbage receptacles and fuel tanks may be located outside of such screened area only if located underground, and such underground

garbage receptacles and fuel tanks and their location must likewise be approved by the Developer prior to construction.

Garbage pickup shall only take place at the garbage receptacle location approved by the Developer in paragraph 2.5 (a) above.

(b) The Developer reserves the right to approve the selection of waste management vendor(s) authorized to provide garbage pickup within the Properties.

2.6. Mobile Homes, Boat Trailers, Outbuildings, Etc. No mobile home, trailer, barn, or other similar out building or structure shall be placed on any Residential Lot at any time, either temporarily or permanently. Except as provided below, boats, boat trailers, campers, recreational vehicles, oversized vehicles, or utility trailers may be maintained on a Residential Lot, but only within an enclosed or screened area such that they are not generally visible from the road or adjacent Properties. Pursuant to the provisions of paragraph 1.1, plans for such enclosed or screened area delineating the size, design, specifications, exterior color or finish, and location must be approved by the Developer prior to construction. No alteration in the exterior appearance of any enclosed or screened area shall be made without like prior written approval by the Developer. A small boat, boat trailer, or boat on a boat trailer may be placed in the rear yard of a Residential Lot without being enclosed by a screened area if such boat, boat trailer, or boat on a boat trailer does not exceed an overall height of four (4') feet above ground level.

2.7. Temporary Structures. No structure of a temporary character other than shelters or temporary structures used by the contractor during construction of the main dwelling unit shall be placed upon any Residential Lot at any time. Temporary shelters or structures permitted during construction may not, at any time, be used as residences or permitted to remain on the Property after completion of construction. The design and color of structures temporarily placed on a Residential Lot by a contractor shall be subject to reasonable aesthetic control by the Developer.

2.8. Utility Easements. The utility and drainage easement reserved by the Developer in paragraph 1.10 of these Covenants shall be located along any two (2) of the boundary lines of each Residential Lot.

2.9. Subdivision of Lots. No Residential Lot shall be subdivided or its boundary lines changed, nor shall application for same be made to Chesterfield County, except with the prior written consent of the Developer. However, the Developer hereby expressly reserves the right to replat any Residential Lot(s) owned by it and shown on the plat of any subdivision within the Properties in order to create a modified building Lot or Lots, and to take such other steps as are reasonably necessary to make such replatted Lot(s) suitable and fit as a building site including, but not limited to, the relocation of easements, walkways, rights of way, roads, bike trails, bridges, parks, recreational and community facilities, and other amenities to conform to the new boundaries of said replatted Lot(s), provided that no Lot originally shown on a recorded plat is reduced to a size more than ten (10%) per cent smaller than the smallest Lot shown on the first plat of the subdivision section recorded in the public records. The provisions of this paragraph shall not prohibit the combining of two (2) or more contiguous Lots into one (1) larger

Lot, only the exterior boundary lines of the resulting larger Lot shall be considered in the interpretation of these Covenants.

### PART III ADDITIONAL RESTRICTIONS AFFECTING OPEN SPACE AREAS

3.1. Maintenance of Open Space Areas. It is the intent of the Developer to maintain and enhance (or to convey subject to open space restrictions to the Association) certain Open Space Areas. The Developer reserves the right to review and modify the Master Plan at its sole option from time to time based upon its continuing research and design program, and such modifications may change the boundaries of certain Open Space Areas designated as such upon the Master Plan. The Developer further reserves the right to transfer, sell, convey, give, donate, or lease to the Association or to any other third party any Open Space Area.

3.2. Easements. An easement in Open Space Areas is hereby granted to the Owners of Properties in Stoney Glen South, tenants of such Properties, and their guests, which easement shall entitle such Owners, tenants, and their guests, to enjoy the Open Space Areas subject to the rules and regulations established by the Developer. The granting of such easement in no way grants to the public or to the owners of any land outside the Properties in Stoney Glen South the right to enter any Open Space Area without the prior written permission of the Developer.

3.3. Improvements. The Developer hereby reserves the right to enter upon any Open Space Area for the purpose of constructing, landscaping, maintaining, and operating any community facilities, including, but not limited to, parks, playgrounds, gazebos, picnic shelters, picnic tables, walking trails, bike trails, and, subject to limitations imposed by governmental authorities, scenic roadsides and neighborhood entrance areas. The Developer further reserves the right to authorize the construction, landscaping, maintenance, or operation of such facilities within Open Space Areas by the Association or any other third party.

3.4. Trash and Garbage. No trash, garbage, sewage, sawdust, or any unsightly or offensive material shall be placed upon any Open Space Area, except as is temporary and incidental to the bona fide improvement of the area in a manner consistent with its classification as an Open Space Area.

3.5. Reservation of Easement. The Developer hereby reserves every reasonable use and enjoyment of said Open Space Areas, in a manner not inconsistent with the provisions of this Declaration.

3.6. Conveyance of Open Space Area. The Developer hereby reserves the right to convey Open Space Areas to the Association. Such conveyance shall be made subject to the provisions of this Part III, all other restrictions and limitations of record, and any other restrictions or limitations which the Developer, in its sole and uncontrolled discretion, shall elect to impose. As an appurtenance to such conveyances, the Association shall have all of the powers, immunities, and privileges reserved unto the Developer in this Part III as well as all of the Developer's obligations with respect thereto, provided, however, that so long as the Developer is the Owner of Property subject to the provisions of this Declaration, the Developer,

in addition to and jointly with the Association, shall retain all rights of easement and entry granted for the purposes of correcting, repairing, enhancing, improving, cleaning, preserving, clearing out, removing, or taking any action to prevent a violation of these Covenants. Property conveyed to the Association pursuant to the authority of this paragraph 3.6 shall become "Common Properties" as prescribed by the Declaration of Covenants and Restrictions of the Stoney Glen South Association, a Virginia General Partnership ("Declaration"), which is being recorded in the Clerk's Office contemporaneously herewith.

#### PART IV ADDITIONS, LIMITATIONS; DURATION AND VIOLATION OF COVENANTS

4.1. Term. (a) All Covenants set forth in this Declaration and any amendments thereto shall run with the land and shall be binding on all parties and persons claiming under them, specifically including, but not limited to, the successors and assigns, if any, of the Developer for a period of thirty (30) years from the date of this Declaration. Upon the expiration of said thirty (30) year period all said Covenants shall be automatically extended for successive periods of ten (10) years. The number of ten (10) year extension periods hereunder shall be unlimited, provided, however, that there shall be no extension of this Declaration if during the last year of the initial thirty (30) year period, or during the last year of any subsequent ten (10) year extension period, seventy-five (75%) percent or more of the total votes (as determined in subparagraph 4.1(c) hereinafter) entitled to be cast by all Owners of all Properties subject to the provisions of this Declaration vote in favor of terminating this Declaration at the end of its then current term at a Duly Called Meeting (as hereinafter defined) of the Owners of the Properties. The presence at said meeting of Owners or ballots entitled to cast seventy-five (75%) percent of the total vote of all the Owners of all the Properties shall constitute a quorum. In the event that the Owners of the Properties vote to terminate this Declaration, the Developer shall execute a certificate which shall set forth the Resolution of Termination adopted by the Owners, the date of the meeting of the Owners at which such Resolution was adopted, the date that notice of such meeting was given, the total number of votes of all Owners of all the Properties, the total number of votes required to constitute a quorum at said meeting, the total number of votes present at said meeting, the total number of votes necessary to adopt a Resolution terminating this Declaration, the total number of votes cast in favor of such Resolution, and the total number of votes cast against such Resolution. Such certificate shall be recorded in the Clerk's Office and may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Declaration.

(b) A "Duly Called Meeting" shall mean and refer to any open meeting of the Owners of the Properties (or a portion of said Owners) called by the Developer for said purposes, subject to the giving of proper notice and the quorum requirements established in subparagraph 4.1(a) and in paragraph 4.2 herein. "Proper notice" shall be deemed to be given when delivered personally or sent by mail to each such Owner not less than thirty (30) days in advance of said meeting. There shall be sent with such notice a statement of certain motions to be introduced for vote of the Owners and a ballot on which each Owner may vote for or against each motion. Each ballot which is presented at such meeting shall be counted in calculating the quorum

requirements for said meeting, provided, however, such ballots shall not be counted in determining whether a quorum is present to vote upon motions not appearing on the ballot.

(c) The votes to which each Owner of Property subject to this Declaration shall be entitled shall be determined as follows:

(i) The Owner of any Property which is also subject to the provisions of the Joint Declaration shall be entitled to as many votes as equals the total number of votes to which he is entitled as a Type "A" Member of the Association as defined and determined in said Declaration.

(ii) The Owner of any Property which is not subject to said Declaration shall be entitled to as many votes as equals the total number of votes to which he would be entitled as a Type "A" Member of the Association if his Property were to be subjected to said Declaration.

4.2. Amendment. All proposed amendments to this Declaration shall be submitted to a vote of the Owners of Properties substantially affected by a change in Covenants at a Duly Called Meeting of said Owners. Unless the contrary shall be determined by a court of equity jurisdiction, "substantially affected" shall mean those Properties shown on (a) the plats showing the Properties to be modified in permitted use by the change, and (b) the plats which subdivided the Property immediately abutting the Property shown on plats identified in recorded in the Clerk's Office. Any such amendment shall be deemed approved if two-thirds (2/3) of the votes (as determined in subparagraph 4.1(c) hereinabove) cast at such meeting vote in favor of such amendment. The presence at said meeting of Owners or ballots entitled to cast sixty (60%) percent of the total vote of all the Owners of Property substantially affected by a change in Covenants shall constitute a quorum. If the required quorum is not present at said meeting, the Developer may, in its sole and uncontrolled discretion, call another meeting or meetings subject to the giving of proper notice, and the required quorum at such subsequent meeting or meetings shall be one-half (1/2) of the required quorum at the preceding meeting. If any proposed amendment to this Declaration is approved by the Owners as set forth above, the Developer shall execute an Addendum to this Declaration which shall set forth the amendment, the effective date of the amendment (which in no event shall be less than sixty (60) days after the date of the meeting of the Owners at which such amendment was adopted), the date of the meeting of the Owners at which such amendment was adopted, the date that notice of such meeting was given, the total number of votes of Owners of Properties substantially affected by such amendment, the total number of votes required to constitute a quorum at a meeting of said owners, the total number of votes of said Owners present at said meeting, the total number of votes necessary to adopt such amendment, the total number of votes cast in favor of such amendment, and the total number of votes cast against such amendment. Such Addendum shall be recorded in the Clerk's Office.

4.3. Additional Covenants. The Developer hereby reserves the right to add additional restrictive covenants in respect to lands within the Properties to be conveyed in the future by the Developer to the Association or to any other third party, or to limit therein the application of these Covenants. The right to add additional restrictions or to limit the application of these Covenants shall be reasonably exercised.

4.4. Additions. (a) The Developer hereby reserves the right to bring within the plan and operation of this Declaration any other property acquired by the Developer which is adjacent to or near the Properties. Such property may be subjected to this Declaration as one parcel or as several smaller parcels simultaneously or at different times. The additions authorized herein shall be made by recording a Supplementary Declaration of Rights, Restrictions, Affirmative Obligations and Conditions with respect to the additional property which shall extend the operation and effect of the Covenants to such additional property. Such Supplementary Declaration may contain such complementary additions and/or modifications of the Covenants as may be necessary or convenient, in the determination of the Developer, to reflect the different character, if any, of the added properties and as are not inconsistent with the plan of this Declaration, but such modifications shall have no effect upon the Property described in Exhibit "A" or upon any other prior additions to the Properties.

(b) Upon the prior written approval of the Developer, the owner of any property who desires to bring such property within the plan and operation of this Declaration and to subject it to the jurisdiction of the Developer shall record a Supplementary Declaration of Rights, Restrictions, Affirmative Obligations and Conditions with respect to the additional property which shall extend the operation and effect of the Covenants to such additional property. Such Supplementary Declaration may contain such complementary additions and/or modifications as may be necessary or convenient, in the determination of the Developer, to reflect the different character, if any, of the added properties and as are not inconsistent with the plan of this Declaration, but such modifications shall have no effect upon the Properties described in Exhibit "A" or upon any other additions to the Properties.

4.5. Enforcement. In the event of a violation or breach of any of the Covenants by any Owner, tenant of such Owner, or agent of such Owner, the Owners of Properties in the neighborhood or in Stoney Glen South, or any of them, jointly or severally, shall have the right to proceed at law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach in any event. In addition to the foregoing, the Developer and/or the Association shall have the right to proceed at law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach in any event.

4.6. Other Remedies. In addition to the foregoing, the Developer shall have the right, whenever there shall have been placed or constructed on any Property in Stoney Glen South any building, structure, object, material, or condition which is in violation of these restrictions, to enter upon such Property where such violation exists and summarily abate or remove the same at the expense of the Owner, if after thirty (30) days written notice of such violation it shall not have been corrected by the Owner, tenant, or agent of the Owner; provided, however, that if the Developer in its reasonable discretion determines that immediate corrective action is required, and such action is not performed immediately by the owner, tenant, or agent of the Owner, the Developer or its agent shall have the right to enter immediately and summarily abate or remove such violation at the expense of the Owner. Any such entry and abatement or removal shall not be deemed a trespass.

4.7. No Trespass. Whenever the Developer or its agent is permitted by this Declaration to correct, repair, enhance, improve, clean, preserve, clear out, remove, or take any



action on any Property or on the easement areas adjacent thereto, entering the Property and taking such action shall not be deemed a trespass.

4.8. No Waiver. The failure to enforce any Covenant, regardless of how long such failure shall continue, shall not constitute a waiver of or a bar to such right to enforce.

4.9. Costs; Lien.

(a) Costs. Whenever the Developer is permitted by this Declaration to correct, repair, enhance, improve, clean, preserve, clear out, remove, or take any action on any Property or on the easement areas adjacent thereto and entitled to have such cost paid by the Owner of the Property on or adjacent to which such corrective action is performed, the cost together with interest thereon at the maximum annual rate permitted by law from the due date and costs of collection therefor including a reasonable attorney's fee, shall be a charge and continuing lien on the real Property and improvements thereon against which such cost is charged, in the hands of the then Owner, his heirs, devisees, personal representatives, tenants, and assigns, and in addition shall also be the personal obligation of the Owner of such real Property at the time when such cost becomes due and payable. The cost of corrective action shall be billed at the completion of such corrective action, and all bills shall be due and payable thirty (30) days from the date of mailing of same.

(b) Judgment. If the cost of corrective action billed to an Owner is not paid within thirty (30) days after the due date, the Developer may bring an action at law against the Owner personally to recover such cost, plus the costs of preparing the filing of the complaint in such action and a reasonable attorney's fee; in the event a judgement is obtained, such judgement shall include interest on the cost as above provided and a reasonable attorney's fee together with the costs of the action.

(c) Subordination of Lien. The lien provided for herein shall be subordinate to the lien of any first deed of trust now or hereafter placed upon any Property subject to these Covenants. In the event a creditor (other than the Developer or the creditor of the Developer) acquires title to any Property pursuant to foreclosure or any other proceeding or deed in lieu of foreclosure, said creditor shall be subject to such lien placed upon such Property during the time in which the creditor holds title to such Property.

4.10. Assignment of Rights.

(a) The Developer hereby reserves the right to assign in whole or in part to the Association its rights under these Covenants to grant consents and approvals or make determinations (or to withhold such consents or disapprovals), to establish rules and regulations, to administer and enforce the provisions of this Declaration, and all other rights reserved herein by the Developer. The assignment of such rights shall be subject to any conditions, limitations, or restrictions which the Developer, in its sole and uncontrolled discretion, may elect to impose at the time of assignment. Following the assignment of such rights, the Association shall assume all of the Developer's obligations which are incident thereto (if any), and the Developer shall have no further obligation or liability with respect thereto. The assignment of such right or rights

by the Developer to the Association shall be made by written instrument which shall be recorded in the Clerk's Office.

(b) Notwithstanding anything in the foregoing to the contrary, so long as the Developer is the Owner of Property subject to the Provisions of this Declaration, the Developer, in addition to and jointly with the Association, shall retain all rights of easement reserved unto it in this Declaration, and shall, furthermore, retain all rights of entry granted in this Declaration for the purposes of correcting, repairing, enhancing, improving, cleaning, preserving, clearing out, removing, or taking any action to prevent a violation of these Covenants.

4.11. Appointment of Agent. The Developer hereby reserves the right to appoint the Association its agent for the purpose of administering and enforcing, in whole or in part, these Covenants and exercising the Developer's rights hereunder. Such appointment may be temporary or permanent, and shall be subject to any conditions, limitations, or restrictions which the Developer, in its sole and uncontrolled discretion, may elect to impose. Upon any such appointment of the Association as agent by the Developer, the Association shall assume any obligations which are incident thereto.

4.12. Declaration. The Declaration is being recorded contemporaneously herewith in the Clerk's Office. Properties described in Exhibit "A" and Owners of Properties described in Exhibit "A" shall also be subject to the provisions of the Declaration. Additional Properties brought within the plan and operation of this Declaration pursuant to paragraph 4.4 hereinabove, and Owners of such additional Properties, may become subject to the provisions of the Declaration, pursuant to the rules and regulations stipulated in Article II of the Declaration.

4.13. Conformance With Zoning and Master Plan. Notwithstanding anything contained herein to the contrary, all the provisions of these Covenants shall be subject to and conform with the provisions of (i) the Zoning Ordinance of the County of Chesterfield, Virginia, and the rules and regulations promulgated thereunder, as may from time to time hereafter be amended or modified, and (ii) the Master Plan for the development of Stoney Glen South as approved by the Board of Supervisors of the County of Chesterfield, Virginia, as may from time to time hereafter be amended or modified.

4.14. No Liability. The Developer shall not be liable to any Owner or to any other person on account of any claim, liability, damage, or expense suffered, incurred by, or threatened against any Owner or such other person arising out of or in any way relating to the subject matter of any reviews, acceptances, inspections, permissions, consents, required approvals or determinations which must be obtained from the Developer or from the County of Chesterfield, Virginia, whether given, granted, or withheld.

4.15. Consents Whenever any consent, approval or the right to make any determination is required of or reserved for the Developer pursuant to this Declaration, unless expressly stated to the contrary, such consent, approval or determination may be given, withheld or made by the Developer upon any ground, including purely aesthetic considerations, which in the sole and uncontrolled discretion of the Developer shall seem sufficient. In the event a written request for any such consent, approval or determination (accompanied, where appropriate, by all

documents required to be delivered to the Developer in connection therewith) is neither granted nor denied within thirty (30) days following the date of receipt by the Developer of the request, the Developer shall be deemed to have waived the requirement for its consent or approval or waived its right to make a determination.

4.16. No Obligation. The provisions of paragraphs 1.6, 1.10, 2.4(b), 3.3, 3.6 and 4.9 of this Declaration shall not be construed to create any obligation on the part of the Developer to take any action in connection with the matters set forth in such paragraphs.

4.17. Severability. Should any covenant herein contained, or any article, section, subsection, sentence, clause, phrase, or term of this Declaration be declared to be void, invalid, illegal, or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no wise affect the other provisions hereof, which are hereby to be severable and which shall remain in full force and effect.

### GENERAL INFORMATION

#### Location:

North line of Hickory Road at its intersection with Halloway Avenue. Tax IDs 781-618-6468; 782-619-6148; 784-619-4378; and 784-620-1961 (Sheets 41 and 45).

#### Existing Zoning:

A

#### Size:

205.1 acres

#### Existing Land Use:

Vacant

#### Adjacent Zoning and Land Use:

North, East and West – A; Single-family residential or vacant

South - A & R-7; Single-family residential, public/semi-public (Matoaca Middle School East Campus & a church) or vacant

## UTILITIES

### Public Water System:

A sixteen (16) inch water line extends along Halloway Road and west along Hickory Road. This water line is adjacent to the southwestern corner of this site. This site is within an area required by the Southern and Western Area Plan to use public water.

Per Utilities Department Design Specifications (DS-21), wherever possible, two (2) supply points shall be provided for subdivisions containing more than twenty-five (25) lots.

### Public Wastewater System:

There is an existing eighteen (18) inch wastewater trunk line extending along Old Town Creek approximately 9,250 feet east of this site. This site is within the Old Town Creek drainage basin. This area is required to use public wastewater by the Southern and Western Area Plan. An off-site extension of approximately 9,250 feet as well as extending on-site the wastewater truck line along the creek boundary to the westernmost property line will be required with development of this site.

## ENVIRONMENTAL

There are no known on- or off-site drainage or erosion problems and none are anticipated after development. The subject property drains to Big Branch and then via Big Branch to Old Town Creek. Big Branch which forms the northern boundary line of the property, is a perennial stream and, as such, is subject to a 100 foot conservation area. The majority of the property outside of the Resource Protection Area (RPA) area is open farm fields.

## PUBLIC FACILITIES

The need for fire, school, library, park and transportation facilities is identified in the Public Facilities Plan, the Thoroughfare Plan and the Capital Improvement Program. This development will have an impact on these facilities.

### Fire Service:

The Public Facilities Plan indicates that fire and emergency medical service (EMS) calls are expected to increase forty-four (44) to seventy-eight (78) percent by 2022. Six (6) new fire/rescue stations are recommended for construction by 2022 in the Plan. In addition to the six (6) new stations, the Plan also recommends the expansion of five (5) existing stations. Based on 330 dwelling units, this development will generate approximately seventy-six (76) calls for fire and emergency medical service each year. The applicant has addressed the impact of this development on fire services. (Proffered Condition 4)

The Matoaca Fire Station, Company Number 8 currently provides fire protection and emergency medical service. When the property is developed, the number of hydrants, quantity of water needed for fire protection, and access requirements will be evaluated during the plans review process.

#### Schools:

Approximately 175 students will be generated by this development. Currently, this site lies in the Ettrick Elementary School attendance zone: capacity - 615, enrollment – 514; Matoaca Middle School zone: capacity - 1,436, enrollment - 1,069; and Matoaca High School zone: capacity - 1,594, enrollment - 1,737. The enrollment is based on September 30, 2005 and the capacity is as of 2005-2006.

This development will have an impact on schools. There are currently two (2) trailers at Ettrick Elementary and three (3) at Matoaca Middle.

This case, combined with other tentative residential developments and zoning cases in the zones will continue to push these schools to capacity, especially at the high school level. This case could necessitate some form of relief in the future.

The applicant has addressed the impact of the development on schools. (Proffered Condition 4)

#### Libraries:

Consistent with the Board of Supervisors' policy, the impact of development on library services is assessed countywide. Based on projected population growth, the Public Facilities Plan identifies a need for additional library space throughout the County.

Development of property in this area would most likely affect the existing Ettrick-Matoaca Library. The Public Facilities Plan identifies a need for additional library space in the Ettrick-Matoaca area. The applicant has addressed the impact on library facilities. (Proffered Condition 4)

#### Parks and Recreation:

The Public Facilities Plan identifies the need for three (3) new regional parks, seven (7) community parks, twenty-nine (29) neighborhood parks and five (5) community centers by 2020. In addition, the Public Facilities Plan identifies the need for ten (10) new or expanded special purpose parks to provide water access or preserve and interpret unique recreational, cultural or environmental resources. The Plan identifies shortfalls in trails and recreational historic sites.

The applicant has addressed the impact of this proposed development on parks and recreation facilities. (Proffered Condition 4)

### Transportation:

The property (205.1 acres) is currently zoned Agricultural (A), and the applicant is requesting rezoning to Residential (R-15). The applicant has proffered a maximum density of 330 lots (Proffered Condition 5). Based on single-family trip rates, development could generate 3,120 average daily trips. These vehicles will be initially distributed along Hickory Road, which had a 2004 traffic count of 2,383 vehicles per day. The Transportation Department cannot support this request because the applicant has not adequately addressed the traffic impact.

The Thoroughfare Plan identifies Hickory Road as a major arterial with a recommended right of way width of ninety (90) feet. The applicant has proffered to dedicate forty-five (45) feet of right of way measured from the centerline of Hickory Road, in accordance with that Plan. (Proffered Condition 1.a)

The Thoroughfare Plan identifies: 1) a proposed north/south major arterial extending through the property and connecting Hickory road at Halloway Avenue with Woodpecker Road at Matoaca Road; 2) a north/south major arterial east of the subject property, extending from River Road, crossing Hickory Road and Woodpecker Road, and then extending north to Branders Bridge Road; and 3) an east/west major arterial connecting both north/south major arterials with Woodpecker Road east of the property. All of these proposed major arterials have recommended right of way widths of ninety (90) feet. Both north/south major arterials are not necessary for the anticipated growth in this area. Staff supports modifying the Thoroughfare Plan by: 1) deleting the north/south arterial connecting Hickory Road at Halloway Avenue with Woodpecker Road at Matoaca Road; 2) relocating a section of the north/south major arterial east of the subject property to intersect Hickory Road at Russwood Road; and 3) deleting a short section of the east/west major arterial. Consistent with that modification, the applicant has proffered to dedicate a ninety (90) foot wide right of way for a north/south major arterial (i.e., the "North/South Arterial") from Hickory Road at the Russwood Road intersection northward through the property. (Proffered Condition 1.b)

Access to major arterials, such as Hickory Road and the North/South Arterial, should be controlled. The applicant has proffered that direct access from the property to Hickory Road will be limited to two (2) public roads; the North/South Arterial and one (1) additional public road (Proffered Condition 2.a). The applicant has also proffered that direct access from the property to the North/South Arterial will be limited to one (1) public road. (Proffered Condition 2.b)

The traffic impact of this development must be addressed. Staff cannot support the request because the proffered conditions fail to guarantee construction of the entire length of the North/South Arterial through the property, a total distance of approximately 4,300 feet. The applicant has proffered to initially construct only 650 feet of the North/South Arterial from Hickory Road (Proffered Condition 3). The proffer also addresses construction of the road from that point to the Resource Protection Area (RPA) along the northern property line, a distance of approximately 3,350 feet. However, the proffer would not require construction of the road until there are only fifty (50) remaining lots, of

the total 330 permitted lots, to be recorded. It is possible that only 280 lots could be recorded as the ultimate build-out of the project and, therefore, there will be no requirement for the construction of 3,350 feet of the arterial across the property. In addition, the proffer offers a cash payment of \$200 per linear foot towards construction of the section of the North/South Arterial from the northern terminus of the developer's construction (at the RPA) to the northern property boundary. The cash amount offered (assuming 300 linear feet at \$200 per linear foot equals to \$60,000) will not cover the cost to construct this section of the North/South Arterial, estimated at \$175,000. The general policy is to require that the entire road be built to the property line or at a minimum, sureties provided for construction for the entire length of the property.

To address other aspects of this development's traffic impact, the applicant has proffered to: 1) construct additional pavement along the North/South Arterial at its intersection with Hickory Road to provide a three (3) lane typical section (i.e., one (1) northbound lane and two (2) southbound lanes); 2) construct additional pavement along the North/South Arterial at the approved public road intersection to provide left and right turn lanes, based on Transportation Department standards; 3) construct additional pavement along Hickory Road at each approved public road intersection, including at the North/South Arterial intersection, to provide left and right turn lanes, based on Transportation Department standards; and 4) widen/improve the north side of Hickory Road to an eleven (11) foot wide travel lane, measured from the centerline of the existing pavement, with an additional one (1) foot wide paved shoulder plus a seven (7) foot wide unpaved shoulder, and overlaying the full width of the road with asphalt for the entire property frontage (Proffered Condition 3). Based on Transportation Department standards, it is anticipated that a left turn lane along the North/South Arterial at the public road intersection will be required, and that left and right turn lanes along Hickory Road at both public road intersections will be required. According to Proffered Condition 3, all of these improvements will be provided with initial development on the property.

Area roads need to be improved to address safety and accommodate the increase in traffic generated by this development. Hickory Road will be directly impacted. Sections of Hickory Road have approximately twenty (20) foot wide pavement with no shoulders. The capacity of that section of Hickory Road is acceptable (Level of Service B) for the volume of traffic it carries (2,383 VPD).

The applicant has also proffered to contribute cash, in an amount consistent with the Board of Supervisors' Policy, towards mitigating the traffic impact of the residential development (Proffered Condition 4). As development continues in this part of the county, traffic volumes on area roads will substantially increase. Cash proffers alone will not cover the cost of the improvements needed to accommodate the traffic increases. No public road improvements in this part of the county are currently included in the Six-Year Improvement Plan.

As previously noted, the applicant has not guaranteed the construction of the entire length of the North/South Arterial through the property; therefore, the Transportation Department cannot support the request.

Financial Impact on Capital Facilities:

		PER UNIT
Potential Number of New Dwelling Units	330*	1.00
Population Increase	897.60	2.72
Number of New Students		
Elementary	76.89	0.23
Middle	42.90	0.13
High	55.77	0.17
TOTAL	175.56	0.53
Net Cost for Schools	1,764,840	5,348
Net Cost for Parks	199,320	604
Net Cost for Libraries	115,170	349
Net Cost for Fire Stations	133,650	405
Average Net Cost for Roads	2,950,860	8,942
TOTAL NET COST	5,163,840	15,648

\* Based on a proffered maximum yield of 330 dwelling units (Proffered Condition 5). The actual number of units and corresponding impact may vary.

As noted, this proposed development will have an impact on capital facilities. Staff has calculated the fiscal impact of every new dwelling unit on schools, roads, parks, libraries, and fire stations at \$15,648 per unit. The applicant has been advised that a maximum proffer of \$15,600 per unit would defray the cost of the capital facilities necessitated by this proposed development. Consistent with the Board of Supervisors' policy, and proffers accepted from other applicants, the applicant has offered cash to assist in defraying the cost of this proposed zoning on such capital facilities. (Proffered Condition 4)

Note that circumstances relevant to this case, as presented by the applicant, have been reviewed and it has been determined that it is appropriate to accept the maximum cash proffer in this case.

LAND USE

Comprehensive Plan:

Lies within the boundaries of the Southern and Western Area Plan which suggests the property is appropriate for residential 1.01 to 2.5 dwelling units per acre.



### Area Development Trends:

The majority of the surrounding properties are zoned Agricultural (A) and are occupied by single-family residential uses on acreage parcels or are vacant. Matoaca Middle School East Campus is located on property immediately south of the request property. A small area to the south is zoned Residential (R-7) and is occupied by a church. It is anticipated that residential use will continue in the area at densities suggested by the Plan.

### Density:

Proffered Condition 3 limits development to a maximum of 330 dwelling units yielding a density of approximately 1.6 units per acre, consistent with the recommendations of the Southern and Western Area Plan.

### Use Limitations:

To address concerns expressed by area citizens, Proffered Condition 6(a) precludes manufactured homes. The Ordinance also precludes manufactured homes. The proffer has been offered in anticipation of a potential State Law change which may require localities to allow manufactured homes in residential districts. If the State Law is amended, depending upon the adopted language, this proffer may or may not be enforceable in the future.

### Restrictive Covenants:

Proffered Condition 9 requires restrictive covenants consistent with those applicable to Stoney Glen South be recorded. It is important to note that the County will only ensure the recordation of the covenants and will not be responsible for their enforcement. Once recorded, the covenants can be changed. It is staff's opinion that these covenants fail to address the Commission's concerns relative to the provision and location of open space, density, sidewalks and housing quality; lack of infrastructure; and timing of the development.

### Community Identification Sign:

Proffered Condition 7 requires the community identification sign to be similar in appearance to the sign in Exhibit A.

### Fencing:

Proffered Condition 8 requires a four (4) foot board fence to be installed within the buffer along Hickory Road as depicted in Exhibit B.

## CONCLUSIONS

While the proposed density complies with the Southern and Western Area Plan, the proposal fails to provide for adequate transportation improvements, as recommended by the Thoroughfare Plan, a component of the Comprehensive Plan. Given this consideration, denial of this request is recommended.

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## CASE HISTORY

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Planning Commission Meeting (2/21/06):

On their own motion, the Commission deferred this case to March 21, 2006.

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Staff (2/22/06):

The applicant was advised in writing that any significant, new or revised information should be submitted no later than February 27, 2006, for consideration at the Commission's March 21, 2006, public hearing.

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Applicant, Staff, Matoaca District Planning Commissioner and Area Residents (3/17/06):

A meeting was held to discuss the request. Citizens expressed concerns relative to traffic, impact on capital facilities, development within rural area, proposed density, lack of proposed open space in the development, drainage and on-site graveyards.

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Applicant (3/20/06):

Additional proffered conditions were submitted.

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Planning Commission Meeting (3/21/06):

The applicant did not accept the recommendation. There was opposition present. Concerns were expressed regarding the condition of area roads; density; rural character; impact on capital facilities; protection of graves; drainage and erosion; adjacent shooting range; impacts to police and fire; and rate of growth in area.

Mr. Bass stated that area roads are not in shape to handle additional development; that the north/south road should be constructed across the entire length of the property; that the proposed density was too high; the rural character was not being maintained; and the only open space being preserved is within Resource Protection Areas (RPAs).

The Commission had concerns with the case as presented; wanting guarantees; being in the wrong place at the wrong time; issues with infrastructure; cash in lieu of road.

The Commission expressed concerns that representations of the quality of the development (i.e., sidewalks, landscaping, open space, quality of housing) were not guaranteed by conditions; that the development was premature; and there is insufficient infrastructure to accommodate the development.

On motion of Mr. Bass, seconded by Mr. Gecker, the Commission recommended denial.

AYES: Messrs. Wilson, Gecker, Bass and Litton.

ABSENT: Mr. Gulley.

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Applicant (4/26/06):

Additional proffered conditions requiring restrictive covenants and addressing construction of the North/South Arterial were submitted.

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Board of Supervisors' Meeting (4/26/06):

Following the public hearing, the Board expressed concerns relative to failure of the proposal to provide for construction of the North/South Arterial across the entire length of the property; traffic impact on area roads; proposed density; impact on capital facilities and that quality of development as described by applicants not in proffered conditions. On their own motion, the Board deferred this case to their June 28, 2006, hearing.

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Staff (4/27/06):

The applicant was advised in writing that the Board deferred the request to their June 28, 2006, hearing. Any new or revised information should be received no later than May 2, 2006, to be considered at the June 28, 2006, hearing.

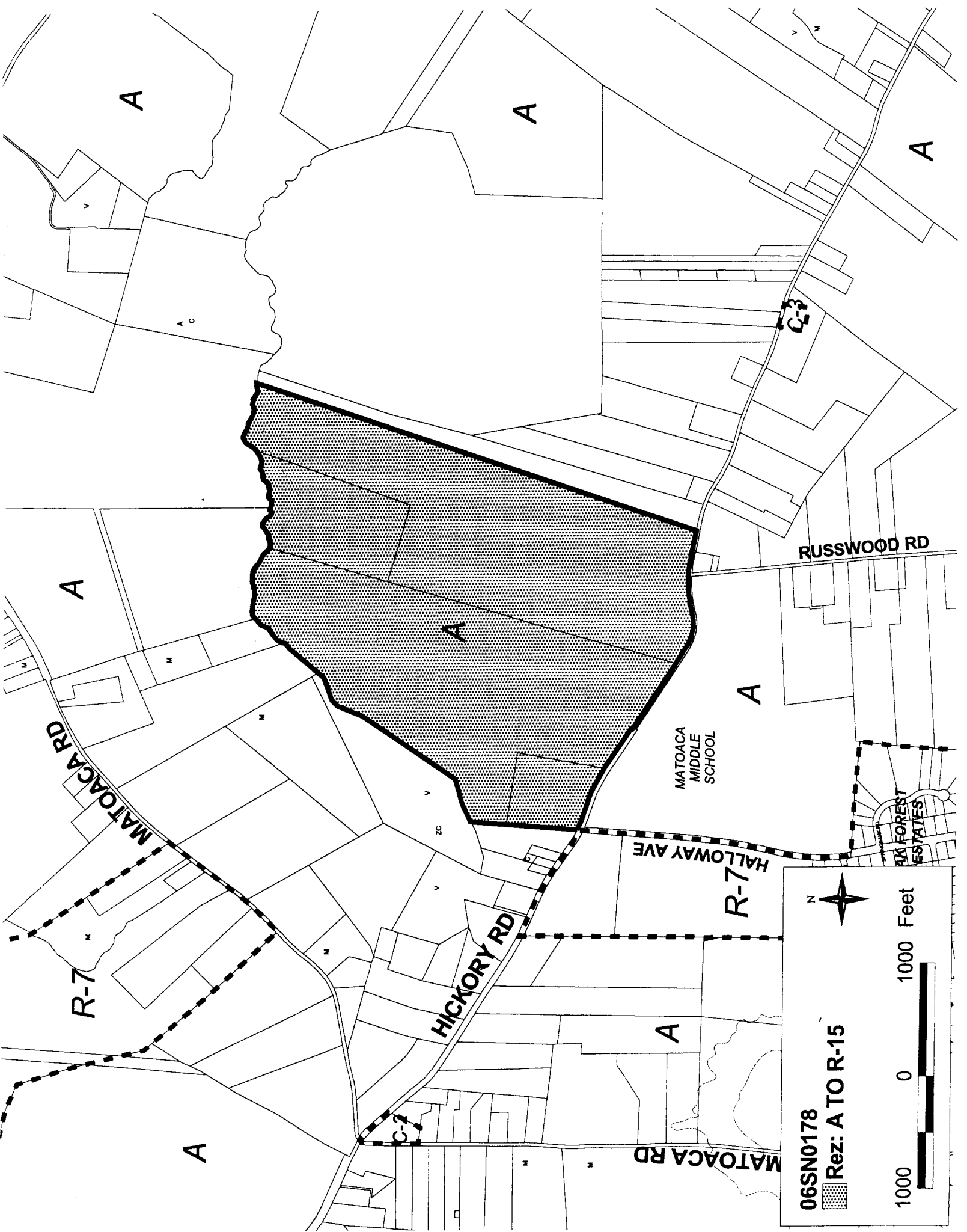
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Applicant (6/21/06):

Revisions to Proffered Condition 3 were submitted to provide a cash payment towards construction of the arterial road across the RPA.

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The Board of Supervisors, on Wednesday, June 28, 2006, beginning at 7:00 p.m., will take under consideration this request.



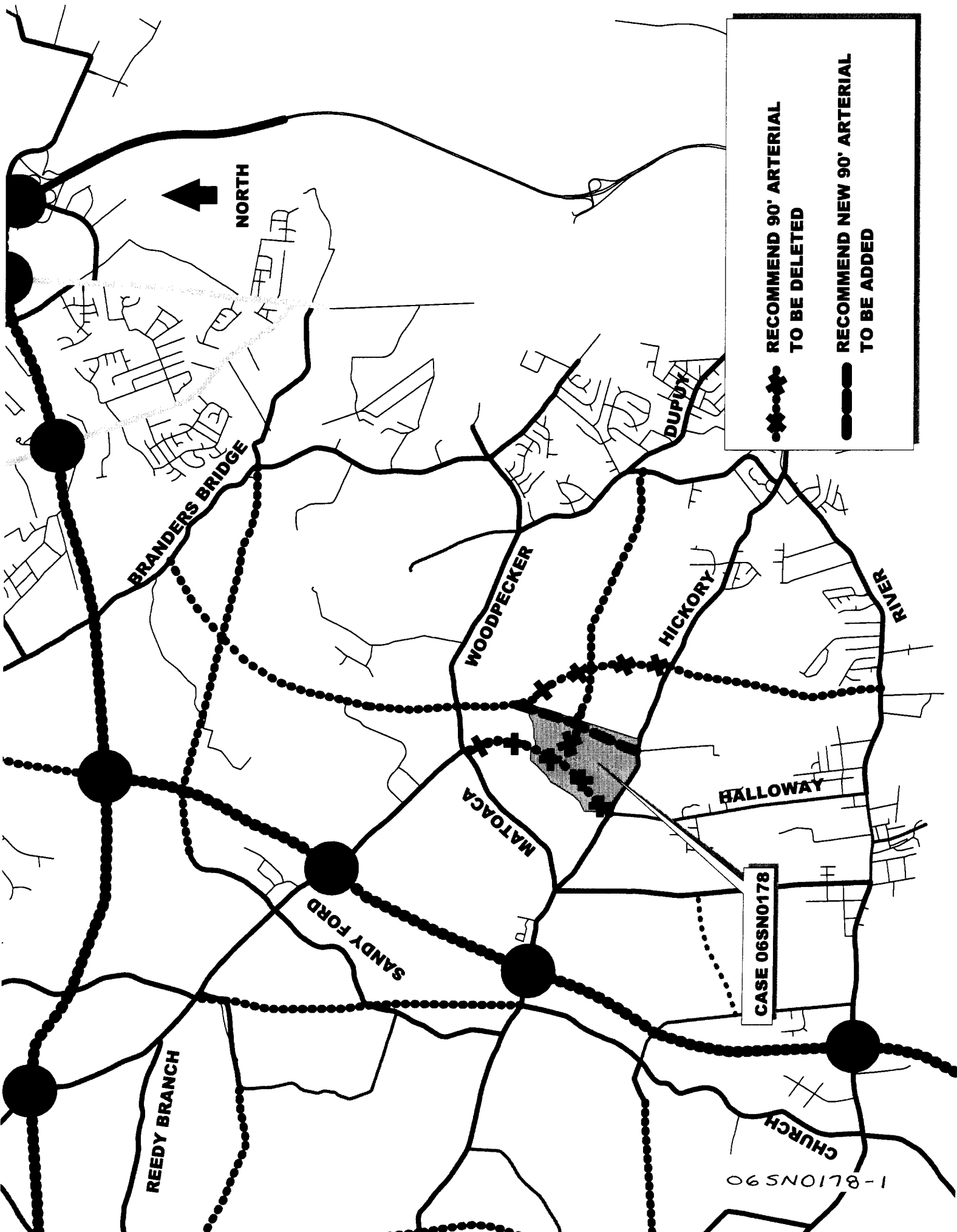
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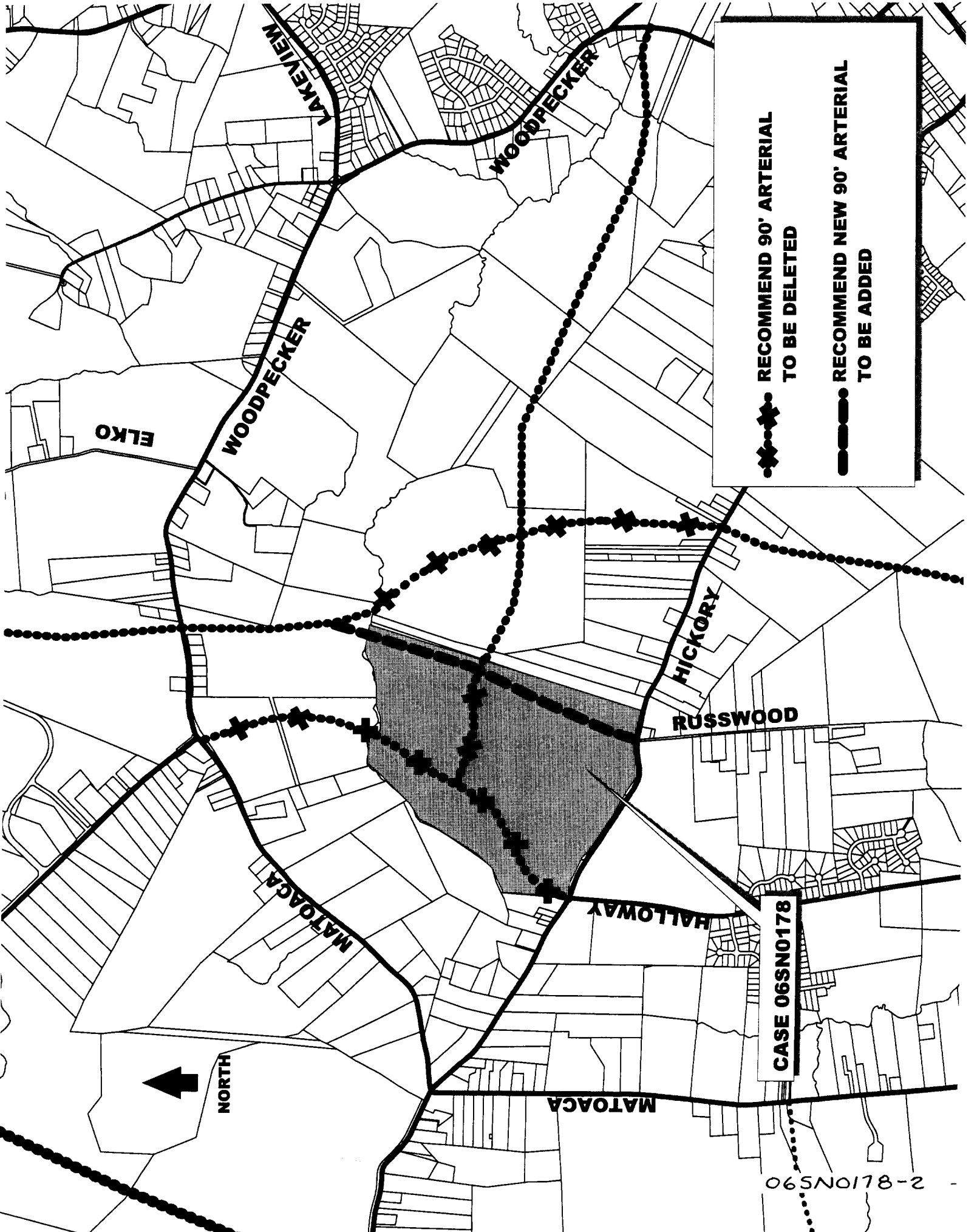


RECOMMEND 90' ARTERIAL  
TO BE DELETED

RECOMMEND NEW 90' ARTERIAL  
TO BE ADDED

CASE 06SN0178

06SN0178-1



**RECOMMEND 90' ARTERIAL  
TO BE DELETED**

**RECOMMEND NEW 90' ARTERIAL  
TO BE ADDED**

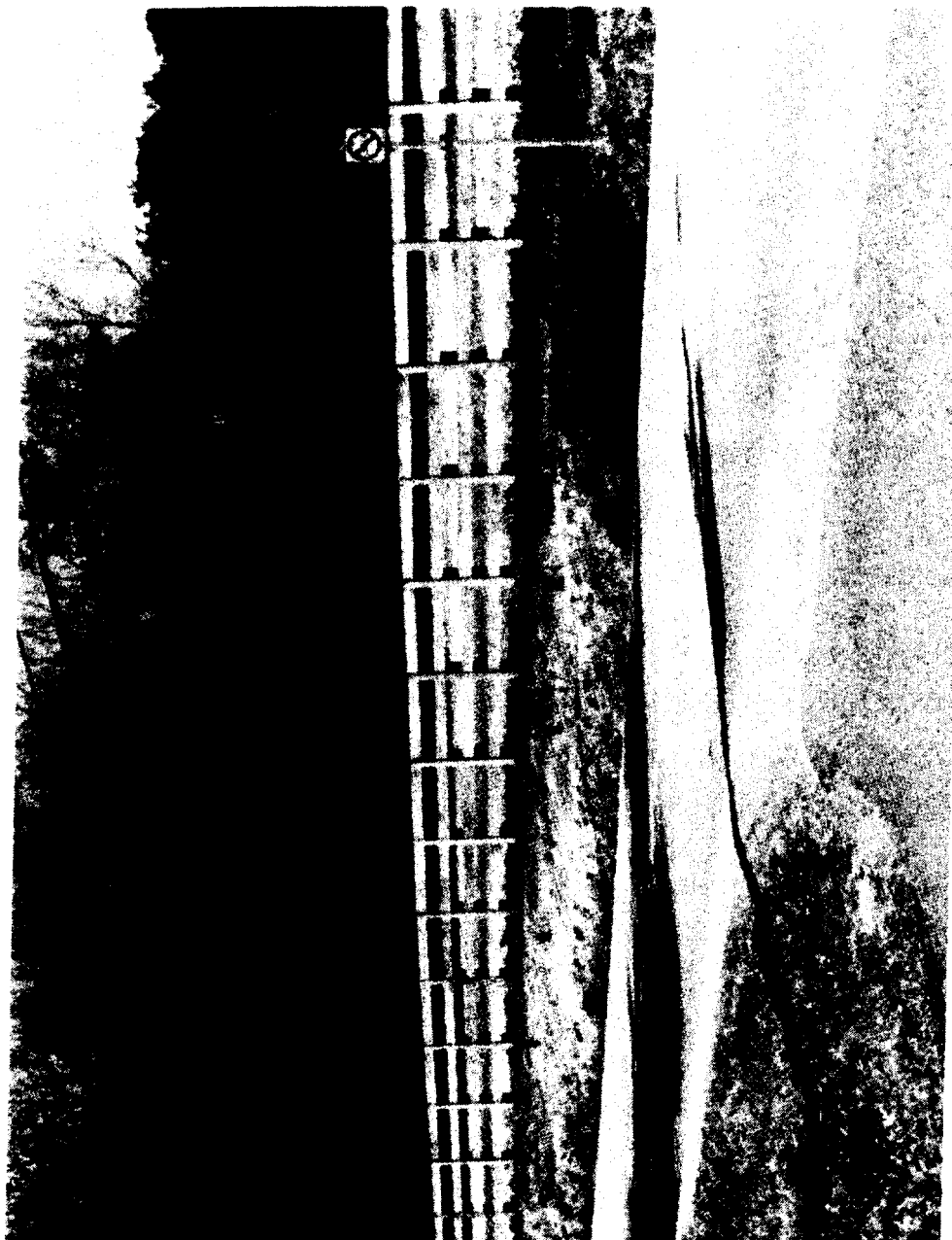
**CASE 06SN0178**

EXHIBIT "A"



065N0178-3

GRABIT "B"



065NO178-4